

MONTANA LEGISLATIVE HISTORY

Chapter 314 19 91

Bill H 76 S _____ Original bill & history C

H. Committee on Business & Economic Development S. Committee on Business & Industry

Hearing Date(s) Jan 29 ☒ C

Hearing Date(s) Mar 08 ☒ C

Feb 02 ☒ C

Mar 13 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 02 ☒ C

Mar 13 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

BY REQUEST OF ADULT & JUVENILE DETENTION, JOINT
INTERIM SUBCOMMITTEE ON

1/03	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/11	FISCAL NOTE RECEIVED		
1/12	FISCAL NOTE PRINTED		
2/07	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED		
4/02	2ND READING PASSED	54	46
4/04	3RD READING PASSED	55	45
	TRANSMITTED TO SENATE		
4/04	FIRST READING		
4/04	REFERRED TO TAXATION		
4/08	HEARING		
4/08	COMMITTEE REPORT—BILL CONCURRED		
4/09	2ND READING CONCURRED	45	0
4/10	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE		
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/22	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/23	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	89	6
	TRANSMITTED TO SENATE		
4/23	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/24	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	46	2
	RETURNED TO HOUSE		
4/25	SIGNED BY SPEAKER		
4/26	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 745		

EFFECTIVE DATE: 7/01/91

HB 75 INTRODUCED BY J. RICE

SURTAX ON LICENSING OF VIDEO GAMBLING
MACHINES TO FUND JUVENILE DETENTION

BY REQUEST OF ADULT & JUVENILE DETENTION, JOINT
INTERIM SUBCOMMITTEE ON

1/03	INTRODUCED
1/03	FISCAL NOTE REQUESTED
1/03	REFERRED TO APPROPRIATIONS
1/07	FIRST READING
1/11	FISCAL NOTE RECEIVED
1/14	FISCAL NOTE PRINTED
1/25	RREFERRED TO JUDICIARY
2/07	HEARING
2/08	TABLED IN COMMITTEE

HB 76 INTRODUCED BY GOULD

TABLE WINE DISTRIBUTION ACT

1/03	INTRODUCED
1/03	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
1/07	FIRST READING
1/29	HEARING
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED

HOUSE FINAL STATUS

HB 77

2/11	2ND READING PASSED	96	2
2/13	3RD READING PASSED	98	2
	TRANSMITTED TO SENATE		
2/14	FIRST READING		
2/14	REFERRED TO BUSINESS & INDUSTRY		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED AS AMENDED	48	0
3/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/21	2ND READING AMENDMENTS CONCURRED	92	1
3/23	3RD READING AMENDMENTS CONCURRED	97	2
3/27	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 314		

EFFECTIVE DATE: 10/01/91

HB 77 INTRODUCED BY QUILICI, ET AL.

INCREASE HIGHWAY PATROL PENSION VIA GENERAL
FUND MONEY AND OTHER SOURCES

1/03	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/07	FIRST READING		
1/11	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
1/24	REVISED FISCAL NOTE REQUESTED		
1/25	HEARING		
1/25	REVISED FISCAL NOTE RECEIVED		
1/25	REVISED FISCAL NOTE PRINTED		
2/01	COMMITTEE REPORT—BILL PASSED		
2/01	TAKEN FROM PRINTING AND REREFERRED TO TAXATION		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	REVISED FISCAL NOTE REQUESTED		
2/15	REVISED FISCAL NOTE RECEIVED		
2/21	REVISED FISCAL NOTE PRINTED		
3/05	2ND READING PASSED	93	3
3/05	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/12	HEARING		
3/22	TABLED IN COMMITTEE		
3/27	TAKEN FROM TABLE		
3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/28	REVISED FISCAL NOTE REQUESTED		
3/28	2ND READING PASSED	71	24
3/28	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING		
3/28	3RD READING PASSED	75	24
	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO FINANCE & CLAIMS		
4/02	HEARING		
4/02	REVISED FISCAL NOTE REQUESTED		
4/02	REVISED FISCAL NOTE RECEIVED		
4/02	REVISED FISCAL NOTE PRINTED		
4/13	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
4/13	ADVERSE COMMITTEE REPORT ADOPTED	35	10
4/15	RECONSIDERED ADOPTION OF ADVERSE COMMITTEE REPORT	36 12	
4/16	2ND READING CONCURRED AS AMENDED	37	11
4/17	3RD READING CONCURRED	36	13

departments in other states to get a feel of whether a line might be non-competitive or volatile.

CHAIRMAN BACHINI asked Mr. Loendorf if he would object to placing the sunset clause in the bill. Mr. Loendorf said he would like the Insurance Commissioner to get an adequate opportunity to do something.

Closing by Sponsor:

SEN. HAGER referred to the statement of the medical malpractice dropping 17 percent. The law had been considered by the Legislature at that time. The fact was that the law was being considered and was on the books subsequently and the rates did drop. The question on the two-year continuation of the law, the sunset provision, is this a case where that wouldn't work very well. This law is dependent on having an actuary in the Department. Actuaries don't work fast. Having an actuary doesn't automatically give an answer. The fact that it has taken this long to bring an actuary on board in the Department, shows that this law should be continued on a permanent basis so the actuary can get some more experience and become more valuable in this area. REP. WHALEN will carry the bill.

HEARING ON HB 76

Presentation and Opening Statement by Sponsor:

REP. R. BUDD GOULD, House District 61, Missoula, said HB 76 is very similar to the one introduced last session. It is a fairness bill. The wine distributor has to do his job, stay in sound financial condition, and do the right thing with the wine makers. The intent of HB 76 is to make the wineries and the small businessmen feel that they have an even playing field and that Montana is a good place to do business. The bill covers dual distributorships. It is important because one particular person can't be frozen out. In his second session, Rep. Jacobson introduced a bill that was passed that dealt with farm implement dealers. At that time, the prices of combines and tractors were going from \$10-100,000. Big companies felt that if they had a dealership in Bismarck, one wasn't needed until Havre or Spokane. Many of these were small business people, as the wine distributors in Montana. Legislation was passed to protect those people in Montana. This bill is to make sure that the business person in Montana is able to stay in business. It is hard to be in business in Montana with the tax structure.

Proponents' Testimony:

Brian Clark, Distributor, Fun Beverage Inc., Kalispell, and President, Montana Beer and Wine Wholesalers' Association, said the Board of the Beer and Wine Wholesalers' Association identified and the general membership ratified the priority of wine legislation as the single most important issue in the 1991

Legislature. Currently, there is no legislation. As a result, they operate with no agreement or contract. He presented written testimony and a standard for distributor agreement. EXHIBITS 6 and 7. Termination of distributorship rights can be with or without cause provided that the partner desiring to terminate gives as short as a 30-day written notice. If there are non-exclusive territories or dual distribution within the same territory, the Company may change the territory by giving notice in writing (highlighted on the exhibit). Dual distribution is disincentive for a wholesaler to aggressively gain distribution on a brand because there is no assurance that the product placed in a store on Monday will be there to get repeat sales on Friday if the person doesn't get there before his competitor does. He would then get the repeat sales. Another example of dual distribution, is where a retailer had asked his salesman to pick some defective product. They may not know whether that product was sold by him or not. As a result, it may be refused. Ironically, the competitor said the same thing.

Robert Zucconi, Zeke's Distributing, Helena, said the present law for contracts in Montana does not cover beer and wine wholesalers in a fair manner. In, 1983, Zeke's Distributing started handling California Coolers, which was the first of its kind in that category. Equipment was bought, and people were added to the organization. Many hours were spent setting up sections in stores to accommodate the product. Four years later, a registered letter informed him that Zeke's was no longer the distributor of that product. At that time the product of California Coolers was 24 percent of his business. It causes great concern when a person loses 24 percent of his business via a letter. It took three years to get to court. The case went to a jury trial and he won the trial. The settlement was in the \$150,000 category, which was fair. They took it to the Supreme Court. They had some evidence that they thought shouldn't have been put in, which was a letter from the winery telling the other wholesaler who was getting the product that if he didn't take it he would be canceled also. That evidence was taken out of the case, so they settled for pennies on the dollar. This bill is fair for both the wine distributors and the business people of Montana and the wineries themselves.

Dave Hewitt, Clausen Distributing Company, said he was on the other side of the coin with Mr. Zucconi. Clausen Distributing was the distributor of products for Brown-Forman. He presented a letter from Brown-Forman that said if Clausen Distributing wanted to continue to sell market brands that it was currently selling under them, then it would have to sell California Coolers.
EXHIBIT 8

Kevin Devine, Devine & Asselstine Inc., a beer and wine distributorship in Great Falls, said there was a similar but stronger law for beer since 1974. It gives distributors some of the major protection that employees have in the wrongful discharge law, which is protection against abrupt and arbitrary

termination. If one brewery thought poor job was being done and could document it, they could terminate the distributor. If an employee was doing a bad job and could document it, that employee could be fired. It could not be done on a whim.

Pete Decker, Briggs Distributing, Billings, said he was terminated as a distributor four years ago. The calendar year before that his sales were close to one-quarter of a million dollars. He considered getting out of the wine business at the time. If that had occurred, five jobs would have been lost.

Bill Watkins, Zip Beverage, Missoula, said he was terminated under the Brown-Forman Act.

Ed Brandt, Cardinal Distributing, Bozeman, said he lost California Cooler on a 30-day notice of termination without cause. At the time, Cardinal Distributing was selling approximately 8,000 cases of product the year before. If they had not been a beer wholesaler and a wine wholesaler, they would not be in the wine business. There is no guarantee of equipment, hiring people, spending money on marketing if we there is a 30 day notice and then no longer be in business. This is a very fair bill.

Roger Tippy, Executive Secretary and Legal Counsel, Montana Beer & Wine Wholesalers' Association, presented a copy of the Private Franchise Contracts. EXHIBIT 9

Opponents' Testimony:

Mona Jamison, Wine Institute, stated her opposition to the bill as introduced because it is governmental interference. It would interfere with people being able to come together and negotiate the terms and conditions they believe are reasonable based on their needs and expectations. This is government telling people what must be in contracts. She urged Committee members think about this bill as it relates to their own businesses. She asked how many would like to find out that the Legislature said there are provisions that must be included in contracts. There are the reasons that you can cancel and cannot cancel. This type of governmental interference in Montana with the ability to negotiate and come to contract conditions is unacceptable. Over the past two to four years, there is no significant evidence indicating that a law as proposed in HB 76 is necessary. Like any other business dealings there are problems that arise; to use those as a reason to have the government step in and dictate what is a reason for termination of a contract is not acceptable to Montanans. This bill regulates the business relations between wine distributors and the suppliers. The implications of HB 76 create full regulation of the market. It creates monopolies and contracts that could exist in perpetuity. It allows the business of the distributorship to be passed down from father to son. In some cases that is reasonable, because they are good business people. There are no public policy reasons in Montana to support

this intrusion into the business relationships between suppliers and distributors. If the expectations and agreements are violated, contract law should and does provide the remedy. California Coolers is now out of business. Perhaps what was happening with the distributorship was being driven by the market. The courts and contracts did work. There was a jury trial. People heard testimony on both sides to determine if it was fair or a violation. As expensive as the courts might be, a case by case analysis is better for Montana than the government dictating the provisions of contracts. There are reasons to treat distributors of beer and wine differently. The nature of the distribution is different. Distributors of wine are franchised to the manufacturer to distribute many brands of various wines. They are not as vulnerable to economic pressures of the manufacturers as are the beer distributors. Beer distributors traditionally handle two or three main brands of beer. HB 76 mandates perpetual contracts. All wine distributor arrangements, at the option of the wholesaler, are converted into contracts of infinite duration except for those suppliers who have enough money to liquidate and break the franchise. It basically hurts the small wineries and aids the larger ones. This Bill undercuts contract law. State laws governing contract including the uniform commercial code which is in effect in Montana and long-standing common law principles are an expression of public policy on a matter of great import to the functioning of the free enterprise system. Limitations on the freedom of parties to make agreements should be enacted only with the clearest understanding of their impacts and implications. This Bill as directed discourages competition in the market. The definition of good cause, as is in this Bill, Section 1, is totally unacceptable. If a definition of "good cause" must remain in the Bill, other language must be added which would also address business reasons as a reasons for termination of a contract. There is no way the Legislature could foresee various market reasons which would justify termination. They would submit other language to address that particular provision. The area of dual appointments again goes to point of how many people should be able to sell various products within a region or area. Competition serves the consumers and the customers. There are amendments submitted. EXHIBIT 10 She urged a do not pass.

Corbin Houchins, General Counsel, Washington Wine Institute, and Special Counsel to the Oregon Wine Growers Association, said there are approximately 140 wineries. These are businesses which enter into agreements. Some agreements are wise, some not so wise, some safe and some speculative. Brand identification, especially for wineries that are not so well known, is a fragile thing. Competition is meant to be uncomfortable. He said the legitimate interests are already protected. He suggested putting them in the uniform commercial code or in some cases in the corporate code where they modify existing provisions. The one provision he wanted was to repeat opposition to the attempt to be omniscient.

Sydney Abrams, Wine Institute, said the beer industry has an equity agreement with wholesalers and the wine industry does not. The two industries are different. The beer industry is doing 90% of the business. There are close to 700 wineries in California. In the past 15 years, Washington has 90 etc. These are small wineries. The largest wineries rarely changes wholesalers. The wholesaler is needed. Franchise laws give problems and legal expenses.

Questions from the Committee:

REP. BENEDICT asked if one party breaks a binding contract with another, shouldn't there be a reason for breaking it.

Ms. Jamison said they don't find any fault with that position. They want them to consider the court system to deal with that. She thinks this Bill will box people in so that business cannot be done.

REP. PAVLOVICH asked if "good cause" needs to be in there. Ms. Jamison deferred it to Mr. Houchins. Mr. Houchins said the brewing industry contracts have a different history. Beer industry contracts became a standard for concentrated hearings. There are many winery agreements which define the terms under which either party may terminate the relationship. The industry is more standard.

REP. PAVLOVICH asked if one winery has canceled a distributor in the United States. Mr. Tippy said the court said if the distributor consistently fails to meet sales expectation; follows a market philosophy contrary to that of the winery; fails to take sufficient steps as promised to improve its performance this could cause cancellation, if there are notices of deficiencies. All of the problems must be documented and given time to improve performance.

REP. WALLIN asked about requirements. Ms. Jamison said as there are differences between vehicles there are requirements of different manufacturers. These drive franchise legislation to become acceptable or unacceptable.

REP. SCOTT asked if they didn't need large distributors to survive. He asked if the smaller vineyards are just offering variety. Mr. Tippy said yes, but with one exception. Every distributing warehouse in Montana is either Gallo or one of the majors.

REP. SCOTT asked if today the major wineries or supplier could have the ability to cancel anytime without cause. Mr. Houchins said it would depend upon what had been promised in order to obtain the brand. The brand drives the product. REP. SCOTT asked if the major suppliers dictate and hold it over others' heads. Mr. Houchins said yes if the contract says "and we can dictate". A contract normally states a person will supply needs

and the other person will do certain things in the marketplace. If one person does not uphold the promise the other person does not have to uphold the promise. The supplier never has the option of getting an injunction because the treatment of market is too sensitive.

REP. ELLIS asked if the marketplace doesn't mandate a certain unfairness. Mr. Houchins said most wineries would like to get a written agreement but can't because normally wholesalers do not want to provide written agreements. The larger winery is constrained by the economics of a limited number of licensees and the requirement to sell. It is impossible to say that there is an overall balance of power.

REP. BENEDICT asked if Brown/Forman arbitrarily bullies distributors into taking their products. Mr. Houchins said no. He said wineries get into litigation and sometimes lose. When they lose they say the system is wrong. REP. BENEDICT asked if "the failure to sign said agreement will result in immediate termination of your distribution..." is bullying. Mr. Houchins said he can't answer yes or no. If that is what is consistent with the promise made by the distributor, or if that is inconsistent, then it is illegal.

REP. CROMLEY asked how difficult it was to become a wholesale wine distributor in Montana. Mr. Tippy said there is no quota system. The license fee is \$500. The law requires sufficient capital to secure warehouse and retail accounts. REP. CROMLEY asked if the supplier would be able to terminate after a sixty day notice for any reason. Mr. Tippy said this Bill, patterned after the Washington State Law, states, that if a winery terminates without good cause, without following the notice of deficiency and opportunity to cure, they must buy the inventory and pay blue sky or good will value of the business. It is usually several dollars per case. If the deficiencies are not cured there is no such obligation to make that compensation. REP. CROMLEY asked if any supplier can enter into a contract with any wholesaler who wants to. Mr. Tippy said 2, Sub 3, usually requires that the winery enter into written agreements with suppliers who are interested in entering into a relationship with them. REP. CROMLEY asked what happened to the market. He asked if a supplier isn't normally interested in a financial background. Mr. Tippy said he wants to go back and look at the Washington Codes to be certain it was copied correctly. The questions were perceptive. The intent would seem to be, if there were an agreement, based on a voluntary meeting of the minds, it must be reviewed in writing by the Department of Revenue.

REP. HANSEN asked if the Beer and Wine Wholesaler's Distributor Supply Equity Act in Washington was restrictive. Mr. Houchins said it doesn't apply to the wine industry and he doesn't have direct information. On the wine side, it applied to out-of-state wineries. REP. HANSEN asked if it didn't apply at all to the distributors. Mr. Houchins said they did not have much

experience with it because it hasn't applied. REP. HANSEN asked Mr. Abrams the same question. Mr. Abrams said he didn't know if California had a similar law. He said he was not a lawyer. In California a winery is allowed to market its own. That law says only the court can determine "good cause". A small winery cannot afford to go to court.

REP. LARSON asked if the amendments had been reviewed. Mr. Tippy said yes. REP. LARSON asked him to comment on them. Mr. Tippy said they delete the ability to cure deficiencies within sixty days and they delete fee obligation to buy "good will" or inventory no matter how arbitrary the cancellation has been. They delete any Robinson-Patton type requirement to give the same price to two distributors in the same market. Essentially, they could not find favor with any of those four.

REP. S. RICE asked what the five largest wineries would be and what percentage of total wine sales they would be in the United States. Mr. Abrams said the largest winery in Delaware has about 22% of the market; Anhauser Busch has 44.6%; Millers has 22.7%; Coors has 10% and Strohs has 10%. Things change so much. If some of the brands stop advertising, the sales go down. REP. S. RICE asked what share of the market would be for Almaden, Paul Mason and Gallo. Mr. Abrams thought 30-35%. REP. S. RICE asked if Gallo was 22%. Mr. Abrams said yes.

REP. BENEDICT asked how the system relates to this Bill. Mr. Abrams said in some states the large operators don't want small distributors. There may be laws to require minimum inventory.

REP. PAVLOVICH asked if he doesn't think only five or six distributors will be in business in the United States eventually. Mr. Abrams said some people think that will be the case. He said wines are different. REP. PAVLOVICH asked what happened to the application of law with California Coolers. Mr. Tippy said yes, the Washington Law applied to out-of-state wineries, such as California Coolers.

They sent out the same type of letter that Mr. Zucconi stating, "You are canceled as of the end of next week".

REP. ELLIS asked if the law ended up in the demise of them. Mr. Abrams said yes.

REP. KNOX asked what he thought about Section 5. Mr. Abrams said he did not believe in dual distribution. He knows it would be difficult to remove that distribution.

CHAIRMAN BACHINI said he had hoped the parties would be able to come to a compromise. It is his intention to put it in a Subcommittee. He named REP. PAVLOVICH, Chairman; REP. LARSON and REP. WALLIN.

Closing by the Sponsor: REP. GOULD said Ms. Jamison mentioned

government intervention. He said at some time it is necessary for the government to get involved. One example, is the seat belt law.

EXECUTIVE ACTION ON HB 279

Motion: REP. BOB PAVLOVICH moved HB 279 DO PASS.

Discussion: REP. RICE said it seemed the biggest objection to this bill was the fact that it tied up your telephone line, that you couldn't just hang up. Is that valid? Is the technology here or coming that when you hang up the phone is disconnected. She has concerns about this limiting free speech. REP. SCOTT said you can tie up your own lines by having someone call you, hang up your phone, and pick it back up in five minutes and the caller will still be here. REP. CROMLEY said in Billings phones could be tied up.

REP. BACHINI said a party had called him and forgot to hang up the phone to close the connection, and he finally had to go over to the house and ask him to hang up the unit. Is that statewide with U.S. West?

REP. STEPLER called his wife, his niece hung up the phone, and when no dial tone came on, there was no change. He waited for four minutes and redialed.

REP. LARSON spoke as a strong supporter of the bill. There is the right of privacy and this bill supports that.

REP. HANSON addressed the difference between here and Billings where they have new electronic equipment. They spent millions updating it. That is why there is the difference. If you have had facsimile machines and have had the advertisers start sending stuff into the fax machines, it really does tie it up. I support this bill wholeheartedly.

REP. CROMLEY said he supports the bill although he didn't think it would do much good.

REP. BENEDICT supports the intent of the bill with the exception of soliciting information and gathering data. Those are two areas he is really concerned with. He has done polls at the radio station, and been involved with the University polls where they have to call 500-700 phone calls. They record that message and send it out. If you agree with the sales tax, push one; if you don't agree, push two. That solicitation to gather data maybe don't belong in there.

REP. BACHINI disagreed, saying that if that poll needs to be taken, they should have that person to person poll, where you at least have the opportunity to say no. Testimony stated that some of the automated devices will continue to go the length of the question that was asked. If it does that is his opposition.

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE Jan. 27, 1991

[illegible]



Post Office Box 124 • Helena, Montana 59624 • Telephone (406) 442-4451

EXHIBIT 6
DATE 1-29-81
NO 76

BEFORE THE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE
MONTANA HOUSE OF REPRESENTATIVES

Hearing on HB76) TESTIMONY
(Wine Distribution Act)) IN SUPPORT
January 29, 1991)

The most common reasons state legislatures enact laws regulating private franchise contracts are that the parties do not have equal bargaining power and that one party is likely to engage in coercive or oppressive behavior. The courts, asked to apply traditional contract law, don't take these market conditions into account because inequality, coercion and the like are more appropriately legislative judgments. The common law doesn't work, as Mr. Zucconi's story so clearly shows.

House Bill 76 is not an unusual idea in the codes of Montana or of most other states. Besides the 1974 law regulating beer distributing agreements, this legislature has enacted laws for the automobile dealers in 1977 and for the farm implement dealers in 1985, extending the latter statute to cover snowmobiles, motorcycles and recreational vehicles in 1989. One of our exhibits shows how widespread the enactment of franchise laws has been in all 50 states. About 20 of the states have enacted laws which cover the winery-wine distributor relationship. We have looked at most of them and selected the law of the state of Washington as our model.

The Washington law is weaker than many of the other state's laws. It does not provide for exclusive territory. It does not provide for attorneys' fees for a distributor who prevails in a lawsuit to enjoin or recover damages for a cancellation. And it does not define good cause.

We have gone along with the Washington law in most of these concessions to the wineries. The difference is that we have

suggested a statutory definition of "good cause." This is because the Ninth Circuit Court of Appeals did hold, in construing a Nevada law similar to Washington's, that "good cause" could include the winery's desire to reorganize its distributors after the winery was acquired by another company. American Mart Corp. v. Jos. Seagram & Sons, Inc., 824 F.2d 733 (1987). After this decision the Nevada legislature added a definition of good cause in its law similar to what we propose.

We have been before you before with this concept. In 1981 our bill would have added wine into the beer franchise law. The wineries objected and brought about the bill's defeat. In 1985 we came back with a new bill, specifically written for the wine business. This committee tabled the bill, expressing dissatisfaction with the territory and attorney fee provisions. In 1989 we proposed a strong law modelled on the Michigan statute but negotiated that down to the Washington law. This committee tabled that bill by a close vote, probably because of some provisions relating to fortified dessert wines which are not in the bill before you today. Please remember that the Wine Institute was willing to accept the Washington law two years ago.

We are back before you today with the Washington law plus two small items. One is the good cause definition, necessary because of the court decision. The other is Section 5 dealing with equal support under dual appointments. This is probably nothing more than the Robinson-Patman Act's principals put into the Montana Alcoholic Beverage Code.

Wineries and Distilleries
STANDARD FORM DISTRIBUTOR AGREEMENT

EXHIBIT 7
DATE 1-29-67
BY 76

THIS AGREEMENT made this 1st day of September, 1967, A.D., by and between
WINERIES AND DISTILLERIES, organized under the laws of the State of California, hereinafter called Company, and

(of State of Organization, if any)

☐ an individual

☐ a Copartnership

☒ a Corporation

hereinafter called Distributor, WITNESSETH:

1. PRODUCTS. The term "Products" as used in this agreement means:

2. GRANT OF SELLING PRIVILEGE AND TERRITORY. Company hereby appoints Distributor as a distributor of the Products and the area in which Distributor shall be primarily responsible for the sale and distribution of such Products shall be the following territory, to wit:

State of Montana

The territory assigned to Distributor herein is not exclusive and it is agreed that the Company may, at any time, change said territory by giving notice in writing of such change, without otherwise affecting the terms of this agreement.

3. ACCEPTANCE AND AGREEMENT TO SELL. Distributor hereby accepts said appointment to sell and distribute the Products and agrees that its primary responsibility is to adequately represent the Company in the territory, and Distributor shall devote sufficient time and shall use its best efforts to sell, and promote the sale of, said Products in the territory.

4. DISTRIBUTOR NOT MADE AGENT OR LEGAL REPRESENTATIVE OF COMPANY. It is agreed that this agreement does not constitute Distributor the agent or legal representative of the Company for any purpose whatsoever. Distributor is not granted any right or authority to assume or to recreate any obligation or responsibility, express or implied, in behalf of or in the name of Company or to bind Company in any manner or thing whatsoever.

5. CONTINUING TERM OF AGREEMENT AND RIGHTS OF CANCELLATION. This agreement shall continue in force and govern all transactions and relations between the parties hereto until terminated. Either party may terminate this agreement at any time with or without cause, provided the party desiring to terminate the same gives unto the other a written notice (by registered mail or other means of delivery) delivered to the last known address of the other party, such termination to become effective 30 days after receipt of notice.

It is understood that any bona fide customer order which may have been taken by Distributor prior to receipt of notice of termination shall be subject to Company's approval and acceptance. It is agreed that such termination will not release Distributor from payment of any sum which may then be owing Company.

6. NO CHANGES FROM PRINTED FORMS ARE PERMITTED. No change, addition, or erasure of this agreement (except filling in of blank lines) shall be valid or binding upon either party unless in writing and signed by both parties hereto. It is declared by both parties that there are no oral or other agreements or understandings between them affecting this agreement, or related to the selling of Products. This agreement supersedes all previous agreements between the parties.

7. PAYMENT BY DISTRIBUTOR. The Distributor agrees to pay the Company current list prices, which said prices may be changed from time to time without notice, on the following terms: Net 30 days from date of invoice except where contrary to law.

8. ACCEPTANCE OF ORDERS. All orders of Products received from Distributor by Company are subject to acceptance in writing by Company and Company agrees that it will endeavor to fill the accepted orders as promptly as practicable, subject, however, to delays caused by Government orders or requirements, transportation conditions, labor or material shortages, strikes, labor disputes, fires, or any other cause beyond Company's control. Distributor expressly releases Company from liabilities for any loss or damage arising from the failure of Company to fill any orders of Distributor.

9. RETURN OF PRODUCTS FOR CREDIT. Returns may be made only after prior written approval from Company.

10. AUDITING OF BOOKS. Distributor further agrees to have his books audited at least annually by a competent accountant or auditor and to furnish a certified copy of such audit to Company for its permanent record.

11. TITLE TO PRODUCTS. Title to any Products ordered by Distributor shall pass to Distributor when such Products have been loaded into Distributor's own or contracted conveyance or when such Products shall have been delivered to and accepted by a common carrier for the account of Distributor.

12. REPORTS TO COMPANY. In order to enable Company to have a complete record of Products sold, Distributor agrees to make available to Company at Company's request a report of all sales of Products made in the territory.

13. **COMPANY'S RIGHT TO REPURCHASE WHEN AGREEMENT IS TERMINATED.** In case of the termination of this agreement by either party for any reason, Company may at its option repurchase from Distributor at the net price paid by Distributor to Company, plus actual freight on shipments to Distributor, any or all of the Products on hand in Distributor's place of business or in the possession of Distributor, and upon demand, Distributor shall be obligated to deliver such goods to Company forthwith against payment by the Company of the repurchase price. The Company, however, reserves the right to reject any product not in first class condition.
14. **AGREEMENT NOT ASSIGNABLE.** This agreement constitutes a personal contract and Distributor shall not transfer or assign same or any part thereof without Company's written consent.
15. **NO IMPLIED WAIVERS.** The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter; or shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
16. **LAW OF AGREEMENT.** This agreement is to be governed by and construed according to the laws of the State of California and venue for any action entered under the agreement is agreed to be the State of California.
17. **CHANGE OF PRODUCT.** Company reserves the right to change any Products or part thereof at any time without notice to Distributor. If any such change is made, there will be no obligation on Company to make such changes upon any Products shipped upon the orders of Distributor, nor shall Company be obligated to make a similar change on any Product or parts previously shipped to Distributor.
18. **NOTICE OF CLAIMS AND ADJUSTMENTS AFTER TERMINATION OF AGREEMENT.** If during the term of this agreement Distributor shall have reason to believe it has any claim against Company in respect of any transaction growing out of this agreement it shall in writing notify Company within 30 days after Distributor knows or has any reason to know the basis of any such claim. Failure to give such notice shall relieve Company from any and all liability on any claim in respect of any transaction growing out of this agreement, notice and full details of which are not given to Company in writing within 30 days after such termination. The provisions of this paragraph shall survive the termination of other portions of this agreement.
19. **NOTICES.** Any notice, request, demand, or other communication required or permitted under this agreement shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:
- (a) In the case of the Company, to its President at the address set forth for the Company below or to such other person or address as the Company may from time to time furnish in writing to the Distributor.
 - (b) In the case of the Distributor, to the Distributor at the address set forth for the Distributor below or to such other person or address as the Distributor may from time to time furnish in writing to the Company.
20. **AUTHORITY TO MAKE AGREEMENT.** This agreement is not valid or binding until and unless executed by the President or a Vice President of the Company.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

"DISTRIBUTOR"

"COMPANY"

[REDACTED]
Company Name

By [REDACTED]
Name

[REDACTED]
Title

Date [REDACTED]

[REDACTED] WINERIES AND DISTILLERIES

By [REDACTED]
Name

[REDACTED]
Title

Date [REDACTED]

EXHIBIT 8
DATE 1-29-91
HB 76*Brown-Forman Corporation*

P O BOX 600 LOUISVILLE KY 40201 502 585-1000

February 12, 1987

Mr. Robert Clausen, Owner
CLAUSEN'S DISTRIBUTING COMPANY
PO BOX 238
Helena, MT 59624

Dear Robert:

As you know, Brown-Forman has recently announced a major reorganization of its sales organization. The four selling divisions — Jack Daniel Distillery, B-F Spirits Ltd., The Jos. Garneau Co. and California Cooler Company — were consolidated into a single sales force. Our reorganization was done to recognize changing market conditions, to make Brown-Forman more competitive, and to maintain Brown-Forman's position as a major beverage marketer in the future.

To accomplish our goals, Brown-Forman intends to continue its long-term policy of distributor consolidation, wherever possible, to make its new organization more effective in an increasingly competitive marketplace.

The need for a definitive understanding of our business relationship has never been more important. Therefore, we will require your execution of a standard contract for California Cooler products and, in the very near future, a standard contract covering Brown-Forman products currently sold by you. Your refusal to execute an agreement covering Brown-Forman products currently distributed will be detrimental to our continued relationship and could ultimately lead to a termination of our relationship.

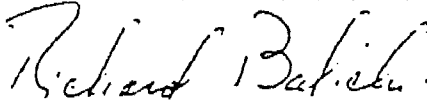
I trust you will share our desire for a contract and will find the proposed agreement fair and equitable when you have an opportunity to review it.



Mr. Robert Clausen, Owner
CLAUSEN'S DISTRIBUTING COMPANY
Page 2
February 12, 1987

Finally, our assignment of California Cooler is conditioned upon your execution of the agreement covering Brown-Forman products currently distributed. Your failure to sign said agreement will result in ~~im~~mediate termination of your distribution of California Cooler.

BROWN-FORMAN CORPORATION



RICHARD BALICKI
Vice President
& General Manager

ACCEPTED AND AGREED:

DISTRIBUTOR: _____

BY: _____
(Authorized Signature)

PRINTED SIGNATURE NAME:

TITLE: _____

P.S. Please sign and return one copy of this contract as soon as possible to:

Michael Mercer
Brown-Forman Corporation
14711 NE 29th Place, Suite #220
Bellevue, WA 98007

1787

§ 295. State Localizer

ALABAMA:

Deceptive Trade Practices Act (Ala Code) §§ 8-19-1 to 8-19-15.
Motor Vehicle Franchise Act (Ala Code) §§ 8-20-1 to 8-20-12.
Farm Equipment Inventory (Ala Code) §§ 8-21-1 to 8-21-14.
Motor Fuel Marketing Act (Ala Code) §§ 8-22-1 to 8-22-18.
Liquor (Ala Code) §§ 28-8-1 to 28-8-8.

ALASKA:

Gasoline Products Leasing Act (Ak Stat) §§ 45.50.800 to 45.50.850.

ARIZONA:

Motor Vehicle Act (Ariz Rev Stat) §§ 28-1302, 28-1304.02.
Petroleum Products Franchises (Ariz Rev Stat) §§ 44-1551, 44-1559.
Termination of Beer and Liquor Franchises (Ariz Rev Stat) §§ 44-1565 to 44-1567.

ARKANSAS:

Franchise Practice Act (Ark Stat Annot) §§ 4-72-201 to 4-72-209 (formerly §§ 70-807 to 70-817).
Gasoline Distributors and Dealers Acts (Ark Stat Annot) §§ 4-72-401 to 4-72-403 (formerly §§ 53-1001 to 53-1003); 4-72-501 to 4-72-503 (formerly §§ 53-1101 to 53-1103).
Farm Equipment Retailer Protection Act (Ark Stat Annot) §§ 4-72-301 to 4-72-309 (formerly §§ 70-819 to 70-826).
Arkansas Motor Vehicle Commission Act (Ark Stat Annot) §§ 23-112-101 to 23-112-105, 23-112-201 to 23-112-205, 23-112-301 to 23-112-311, 23-112-402 to 23-112-406, 23-112-501 to 23-112-509 (formerly §§ 75-2301 to 75-2312).

CALIFORNIA:

Franchise Investment Law (Ca Corp Code) §§ 31000 to 31516 (disclosure and registration requirements).
Permit Processing Times (Ca Admin Code) §§ 250.50, 250.51.
Franchise Relations Act (Ca Bus and Prof Code) §§ 20000 to 20043 (relationship termination and renewal laws).
Contracts for Seller-Assisted Marketing Plans (Ca Civil Code) §§ 1812.200 to 1812.220 (business opportunity laws).
Automobile Dealers Act (Ca Veh Code) §§ 3060 to 3069.
Petroleum Dealers and Distributors (Ca Bus and Prof Code) §§ 20999 to 20999.4.
California Fair Dealership Law (Ca Civil Code) §§ 80 to 86.
Relocation of Franchises in Shopping Centers (Laws of 1980, Ch 1355 § 5).
Discrimination (Ca Civ Code) Div 1, Part 2 § 51.8.

COLORADO:⁹³

Automobile Dealers (Colo Rev Stat) §§ 12-6-101, 12-6-102, 12-6-118 to 12-6-122, 12-6-301 to 12-6-303.
Farm Implements (Colo Rev Stat) §§ 35-38-101 to 35-38-110.

CONNECTICUT:⁹⁴

Termination and Renewal Law (Conn Gen Stat) §§ 42-133c to 42-133h.

⁹³ McKenzie, Franchise regulation (Colo) 15 anybody here play this game? 54 Conn BJ 446, Colo Lawyer 395(3), March 1986.

⁹⁴ Farrell, Franchising in Connecticut—can

Business Opportunities Law (Conn Gen Stat) §§ 36-503 to 36-521.
Petroleum Product Franchisors (Conn Gen Stat) §§ 42-133j to 42-133n.
Liquor Dealers (Conn Gen Stat) § 30-17.
Automobile Dealerships (Conn Gen Stat) §§ 42-133r to 42-133ce.

DELAWARE:

Prohibited Trade Practices (Del Code Annot) §§ 6-2551 to 6-2564.
Retail Sales of Motor Fuel (Del Code Annot) §§ 6-2901 to 6-2912.
Motor Vehicle Franchising Practices Act (Del Code Annot) §§ 6-4901 to 6-4918.
Pyramid or Chain Distribution Schemes (Del Code Annot) §§ 6-2561 to 2564.
Equipment Dealer Contracts (Del Code Annot) §§ 6-2720 to 6-2727 (construction, farm, industrial or outdoor power equipment).

FLORIDA:

Misrepresentation Law (Fla Stat Annot) § 817.416.
Business Opportunity Law (Fla Stat Annot) §§ 559.80 to 559.815.
Motor Vehicle Dealers (Fla Stat Annot) §§ 320.64 et seq.
Farm Equipment (Fla Stat Annot) §§ 686.201 to 686.418.
Motor Fuel (Fla Stat Annot) §§ 526.301 to 526.3135.
Beer (Fla Stat Annot) § 563.022.

GEORGIA:⁹⁵

Sale of Business Opportunities (Geo Code) §§ 10-1-410 to 10-1-416.
Gasoline Marketing Practices Act (Geo Code) §§ 10-1-230 to 10-1-241.
Motor Vehicle Franchise Practices Act (Geo Code) §§ 10-1-620 to 10-1-663.
Farm Equipment (Geo Code) §§ 13-8-31 to 13-8-45.
Optical Firms (Geo Code) § 43-30-5.1.

HAWAII:

Franchise Investment Law (HI Rev Stat) §§ 482E-1 to 482E-12.
Automobile Dealers Act (HI Rev Stat) § 437-28(b).
Gasoline Dealers Act (HI Rev Stat) §§ 486H-1 to 486H-9.
Office Machines (HI Rev Stat) §§ 481G-1 to 481G-8.

IDAHO:

Farm Implement Dealers (ID Code) §§ 28-23-101 to 28-23-111.
Automobile Dealers (ID Code) § 49-2414.
Beer Distributors (ID Code) § 23-1033A.
Wine Distribution (ID Code) § 23-1328A.

ILLINOIS:

Franchise Disclosure Act of 1987, Laws 1987, P.A. 85-551 §§ 1 to 44.
Motor Vehicle Franchise Act (Ill Rev Stat) Ch 121 1/2 §§ 751 to 764.
Farm, Industrial and Outdoor Power Equipment Fair Dealership Act (Ill Rev Stat) Ch 5 §§ 1501 to 1511.
Beer Wholesalers (Ill Rev Stat) Ch 43 §§ 301.1 to 302.

INDIANA:

Indiana Franchise Disclosure Law (Ind Code) §§ 23-2-2.5-1 to 23-2-2.5-50.
Indiana Deceptive Franchise Practice Law (Ind Code) §§ 23-2-2.7-1 to 23-2-2.7-7.

⁹⁵ Branch, Franchising in Georgia, 24 Ga St BJ 92, Nov 1987.

Indiana Business Opportunity Transactions Act (Ind Code) §§ 24-5-8-1 to 24-5-8-21.

Motor Vehicle Code (Ind Code) §§ 9-10-1-1 to 9-10-5-5.

Beer Distributors (Ind Code) § 7.1-5-5-9.

IOWA:

Business Opportunity Sales Law (Iowa Code) §§ 523B.1 to 523B.11.

Motor Vehicle Franchisors (Iowa Code) §§ 322A.1 to 322A.17.

Marketing and Distribution of Motor Fuel and Special Fuel (Iowa Code) §§ 323.1 to 323.13, 323A.1 to 323A.3.

Farm Implements, Motorcycle and Parts Franchises (Iowa Code) §§ 322D-1 to 322D-8.

KANSAS:

Motor Vehicle Dealers (Kans Stat Annot) §§ 8-2401 et seq., (formerly §§ 8-2301 to 8-2323).

Farm Equipment Dealers (Kans Stat Annot) §§ 16-1001 to 16-1006.

Liquor Franchisors (Kans Stat Annot) §§ 41-410 to 41-411.

KENTUCKY:

Sale of Business Opportunities (Ky Rev Stat) §§ 367.801 to 367.819, 367.990.

Motor Vehicle Dealers (Ky Rev Stat) §§ 190.010 to 190.080.

LOUISIANA:

Business Opportunity Sellers and Agents (La Rev Stat) §§ 51:1821 to 51:1824.

Service Station Dealers Day in Court Law (La Rev Stat) §§ 51:1451 to 51:1454.

Motor Vehicle Dealers (La Rev Stat) § 32:1254A(4)(c).

Farm Equipment Dealers (La Rev Stat) §§ 51:481 to 51:487.

Sales Representatives (La Rev Stat) §§ 51:441 to 51:445.

Real Estate Agencies (Laws of 1983, Pub. Law No. 83-381).

Marine Products (Laws of 1987, Act 168).

Motorcycles (Laws of 1988, Act 327).

Motorcycles and ATV's (Laws of 1988, Act 820).

MAINE:

Business Opportunity Law (Maine Rev Stat Annot) Title 32, Ch 69-B §§ 4691 to 4700-B.

Motor Vehicle (Maine Rev Stat Annot) Title 10, Ch 204 §§ 1171 to 1186.

Motor Fuel Distribution Act (Maine Rev Stat Annot) Title 10, Ch 215 §§ 1451 to 1456.

Wine Franchises (Maine Rev Stat Annot) Title 28-A, Ch 57, §§ 1451 to 1465.

MARYLAND:

Franchise Registration and Disclosure Act (Annot Code of Md) Art 56 §§ 345 to 365D.

Franchise Registration and Disclosure Regulations Title 02, subtitle 02, Ch 10; State Law Dept, Div of Securities.

Business Opportunities Sales Act (Annot Code of Md) Art 56 §§ 401 to 415.

Gasoline Products Marketing Act (Annot Code of Md—Art Commercial Law, Title 11) §§ 11-301 to 11-308.

Beer Franchise Fair Dealing Act (Annot Code of Md) Art 2B §§ 203A to 203G.

Equity Participation Investment Program Law (Statute Extending Program to Franchising) (Annot Code of Md) Art 13 §§ 235 to 241.

MASSACHUSETTS:

Automobile Dealers' Act (Mass Gen Laws) Ch 93B §§ 1 to 15.

Gasoline Dealers' Act (Mass Gen Laws) Ch 93E §§ 1 to 9.

Alcoholic Liquors (Mass Gen Laws) Ch 138 § 25E (Unfair Trade Practices).

MICHIGAN:

Franchise Investment Law (Mich Compiled Laws) §§ 445.1501 to 445.1545.⁹⁶

Business Opportunity Act (Mich Compiled Laws) § 445.902.

Motor Vehicle Dealers (Mich Compiled Laws) §§ 445.1561 to 445.1583.

Farm and Utility Equipment Franchise Act (Mich Compiled Laws) §§ 445.1451 et seq.

Beer and Wine Wholesalers (Mich Compiled Laws) §§ 436.30a to 436.30d.

MINNESOTA:

Franchise Law (Minn Stat) §§ 80C.01 to 80C.22 (includes relationship termination and renewal provisions).⁹⁷

Powers of Commissioner of Commerce (Minn Stat) §§ 45.026 to 45.028 (includes investigation, hearing and enforcement powers pertaining to Ch 80C).

Automobile Dealers (Minn Stat) §§ 80E.01 to 80E.18.

Farm Implement Dealers (Minn Stat) § 325E.05.

Brewers and Beer Wholesalers (Minn Stat) §§ 325B.01 to 325B.17.

Motor Fuel Dealers (Minn Stat) § 80C.145.

Burglar Alarm Franchises (Minn Stat) § 80C.30.

MISSISSIPPI:

Pyramid Sales Schemes (Miss Code Annot) §§ 75-24-51 to 75-24-61 (termination and renewal laws).

Motor Vehicle Commission Act (Miss Code Annot) §§ 63-17-51 to 63-17-139.

Inventory Repurchase (Miss Code Annot) §§ 75-77-1 to 75-77-19.

MISSOURI:

Merchandising Practices Act (Mo Rev Stat) §§ 407.400 to 407.420 (includes pyramid sales law and termination law).

Farm Machinery Dealers' Dealership Agreements. Inventory Act (Mo Rev Stat) §§ 407.838 to 407.848.

Farm Implement Manufacturer or Distributors—Repurchase of Retail Inventories (Mo Sess Laws, Mo Rev Stat) §§ 407.850 to 407.885.

Motor Vehicle Franchise Practices Act (Mo Rev Stat) §§ 407.810 to 407.835.

MONTANA:

Automobile Dealers (Mont Code Annot) §§ 61-4-201 to 61-4-210.

Brewers and Beer Sellers (Mont Code Annot) §§ 16-3-221 to 16-3-226.

NEBRASKA:

⁹⁶ May and Steinberg, Great expectations: 1984 amendments to the Michigan Franchise Investment Law, 61 Mich BJ 32, Jan 1985; Foley, The Slippery Slope of Renewal of Notice Filing under Michigan's Franchise Investment

Law, 8 Franchise LJ 3, Spring 1989.

⁹⁷ Alden, Overview of franchising for general practitioner, 54 Hennepin Lawyer 12 (May-June 1985).

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Franchise Practices Act (Nebr Rev Stat) §§ 87-401 to 87-410.
Seller-Assisted Marketing Plans (Nebr Rev Stat) §§ 59-1701 to 59-1761.
Motor Vehicle Industry Licensing Act (Nebr Rev Stat) §§ 60-1401.01 to 60-1435.

Farm Implement Dealers (Nebr Rev Stat) §§ 69-1501 to 69-1504.
Motor Fuel Dealers Succession Act (Nebr Rev Stat) §§ 87-411 to 87-414.

NEVADA:

Automobile Dealers (Nev Rev Stat) Title 43 §§ 482.36311 to 482.3665.
Liquor and Beer Dealers (Nev Rev Stat) Title 52 §§ 598.290 to 598.350.
Petroleum Products Dealers (Nev Rev Stat) Title 52 §§ 598.650 to 598.680.

NEW HAMPSHIRE:

Distributorship Disclosure Act (NH Rev Stat Annot) §§ 358-E:1 to 358-E:6.
Motor Vehicle Franchises (NH Rev Stat Annot) §§ 357-C et seq. (formerly §§ 357B:1 to 357B:17).
Gasoline Franchises (NH Rev Stat Annot) §§ 339C:1 to 339C:9.

NEW JERSEY:

Franchise Practices Act (NJ Rev Stat) §§ 56:10-1 to 56:10-15.**

NEW MEXICO:

Automobile Dealers (N Mex Stat Annot) §§ 57-16-1 to 57-16-16.
Liquor and Beer Dealers (N Mex Stat Annot) §§ 60-8A-1 to 60-8A-11 (formerly §§ 60-9-3 to 60-9-12); Laws 1981, Ch 39.
Farm Equipment Dealers (N Mex Stat Annot) §§ 57-23-1 to 57-23-8.

NEW YORK:**

Franchise Sales Act (NY Gen Bus Law) Art 33 §§ 680 to 695.
Automobile Dealers (NY Veh and Traff Law) Art 17A §§ 460 to 471; (NY Gen Bus Law) Art 11-A § 197.
Gasoline Dealers (NY Gen Bus Law) Art 11-B §§ 199-a to 199-k.

NORTH CAROLINA:

Business Opportunity Sales Law (NC Gen Stat) §§ 66-94 to 66-100.
Motor Vehicle Dealers (NC Gen Stat) § 20-305.
Brewers (NC Gen Stat) § 18B-1114.

NORTH DAKOTA:

Franchise Investment Law (ND Century Code) §§ 51-19-01 to 51-19-17.
Farm Implement and Motor Vehicle Dealers (ND Century Code) §§ 51-07-01, 51-07-01.1.

Recreational Vehicles (ND Century Code) §§ 51-20-01, 51-20-02.

Heavy Construction Equipment Franchises (ND Century Code) §§ 51-20.1-01 to 51-20.1-05.

General Dealer Law S.B. 2403 apprvd April 1, 1987 eff July 1, 1987.

OHIO:

Business Opportunity Law (Ohio Rev Code) §§ 1334.01 to 1334.15, 1334.99.
Motor Vehicle Franchises (Ohio Rev Code) §§ 4517.01 to 4517.65.
Alcoholic Beverages Franchise Act (Ohio Rev Code) §§ 1333.82 to 1333.87.

98. Espersen, Overview of Franchise Practice Act (New Jersey) NJ Law 44, Spring 1985.

general practitioner in New York, 56 NY St B 26(5), July 1984.

99. DeBiase, Franchising: a primer for the

62B Am Jur 2d PRIVATE FRANCHISE CONTRACTS § 295

OKLAHOMA:

Business Opportunity Sales Act (Okla Stat) Title 71 §§ 801 to 827 (added by Laws 1985, H.B. No. 1289, approved June 13, 1985, eff November 1, 1985).

Automobile Dealers (Okla Stat) Title 47, Ch 62 §§ 561-575.

OREGON:

Franchise Law (Oreg Rev Stat) Title 50 §§ 650.005 to 650.085.

Administrative Rules Ch 815, Div 40.

Motor Vehicle Dealerships (Oreg Rev Stat) Title 50 §§ 650.120 to 650.170.

PENNSYLVANIA:

Petroleum Products Dealers (Penn Stat Annot) Title 73 §§ 202-1 to 202-8 (Purdon).

Motor Vehicle Act (Penn Acts of 1973) Act No 144 §§ 1 to 11.

RHODE ISLAND:

Franchise and Distributorship Investment Regulations Act (Gen Laws of RI) §§ 19-28-1 to 19-28-15.

Motor Vehicle Laws (Gen Laws of RI) §§ 31-5.1-1 et seq.

Motor Fuel Distribution and Sales (Gen Laws of RI) §§ 5-55-1 et seq.

Beer Industry Fair Dealing Law (Gen Laws of RI) §§ 3-13-1 et seq.

SOUTH CAROLINA:

Business Opportunity Sales Act (SC Code) §§ 39-57-10 to 39-57-80.

Motor Vehicle Dealers (SC Code) §§ 56-15-10 to 56-15-130.

SOUTH DAKOTA:

Franchises for Brand-Name Goods and Services (S Dak Codified Laws) §§ 37-5A-1 to 37-5A-87.

Business Opportunities Act (S Dak Laws 1985) H.B. No. 1076, approved March 2, 1985, eff July 1, 1985.

Farm Implement Dealers (S Dak Codified Laws) §§ 37-5-1 to 37-5-9.

Motor Vehicle Dealers (S Dak Codified Laws) §§ 32-6A-1 to 32-6A-16 [repealed by SL 1986, Ch 250 § 63].

Beer Distributors (S Dak Laws 1978) Ch 266.

TENNESSEE:

Petroleum Trade Practices Act (Tenn Code Annot) §§ 47-25-601 to 47-25-607, 47-25-621 to 47-25-624 (formerly §§ 69-7-701 to 69-7-707, 69-7-721 to 69-7-724).

Farm Implement and Industrial Equipment Dealers (Tenn Code Annot) §§ 47-25-1301 et seq. (formerly §§ 47-19-101 to 47-19-110).

Motor Vehicle Dealers (Tenn Code Annot) § 55-13-103 (formerly § 59-13-1303).

TEXAS:

Business Opportunity Act (Tex Rev Civ Stat) Title 79, Ch 16, Art 16.01 to 16.15 as amend eff Aug 29, 1983 and May 24, 1985.

Business Opportunity Regulations 1 TAC §§ 97.21 to 97.23.

Motor Vehicles Dealers (Tex Motor Veh Commission Code) Art 4413(36).

UTAH:

Business Opportunity Disclosure Act (Utah Code Annot) §§ 13-15-1 to 13-15-6.

1. Miller, Franchising in Texas, 14 St Mary's 13 301, Spring 1983; Brady, Price and Keller, Franchising in Texas, 6 Franchise LJ 1, Fall 1986; Lewis, Franchise litigation in Texas: ana-

lyzing claims and defenses (Symposium: Business Tort Litigation) 19 St. Mary's LJ 663, Winter 1988.

Automobile Dealers (Utah Code Annot) Title 41, Chs 3 and 4.
Gasoline Products Marketing Act §§ 13-12-1 to 13-12-8.

VERMONT:

Motor Vehicle Dealers Act (Vt Stat Annot) Title 9, Ch 107 §§ 4083 to 4100.

Gasoline Service Station Franchises (Vt Stat Annot) Title 9, Ch 109 §§ 4101 to 4109.

Beer and Wine Franchises (Vt Stat Annot) Title 7, Ch 23 §§ 701 to 708.

VIRGINIA:

Retail Franchising Act (Va Code) §§ 13.1-557 to 13.1-574.²

Business Opportunity Sales Act (Va Code) §§ 59.1-262 to 59.1-269.

Petroleum Products Franchise Act (Va Code) §§ 59.1-21.8 to 59.1-21.18:1

Motor Vehicle Dealers (Va Code) §§ 46.1-546 to 46.1-550:5.

Beer Franchise Act (Va Code) §§ 4-118.3 to 4-118.20.

WASHINGTON:

Franchise Investment Protection Act (Wash Rev Code) §§ 19.100.010 to 19.100.940.

Business Opportunities Fraud Act (Wash Rev Code) §§ 19.110.010 to 19.110.930.

Motor Vehicles Dealers (Wash Rev Code) §§ 46.70.180(11), 46.70.190.

Farm Implement Dealers (Wash Rev Code) §§ 19.98.010 to 19.98.910.

Beer and Wine Wholesale Distributor Supplier Equity Act Wash 1984 Session Laws, Ch 169.

Gasoline Dealers' Bill of Rights Act 1986 Reg Session Laws, Ch 320.

WEST VIRGINIA:

Brewers and Beer Distributors Act (W Va Code) §§ 11-16-12a, 11-16-13b.

Motor Vehicle Manufacturers and Dealers (W Va Code) §§ 47-17-1 to 47-17-10. Repealed and replaced by Laws 1982, House Bill 1927, eff June 10, 1982 [now §§ 17A-6A-1 et seq.].

Petroleum Products Franchise Act (W Va Code) §§ 47-11C-1 to 47-11C-8.

WISCONSIN:

Franchise Investment Law (Wis Stat Annot) §§ 553.01 to 553.78.

Fair Dealership Law (Wis Stat Annot) §§ 135.01 to 135.07.

Automobile Dealers' Act (Wis Stat Annot) § 218.01(3)(a).

WYOMING:

Motor Vehicle Franchise Act (Wyo Stat Annot) §§ 40-15-101 to 40-15-109.

Repurchase of Farm Machinery Act (Wyo Stat Annot) §§ 40-18-101 to 40-18-107.

Practice guide: For a detailed analysis of franchise relationship laws, including popular names, types of law, statutory examples of good cause for termination, procedural requirements for termination and nonrenewal, and examples of other unlawful practices under various state statutory provisions, see the appendices following the article cited below.³

§ 296. —Other jurisdictions**PUERTO RICO:**

Dealers' Contracts Act (PR Laws Annot) Title 10, Ch 14 §§ 278 to 278d (termination).

2. Clinard and Peters, The Virginia experience: retail franchise regulation, 9 Va BAJ 20, Spring 1983.

3. Pitegoff, Franchise Relationship Laws: A Minefield for Franchisors, 45 Business Lawyer 289 (Nov. 1989), at pp 321 et seq.

VIRGIN ISLANDS:

Consumer Protection Law Title 12A §§ 130-139 (Franchised Businesses).

ALBERTA, CANADA:

Franchises Act (Alb Rev Stat) Ch F-17 (disclosure and registration requirements).

Franchises Regulations Alberta Regulation 201/72.

B. FRANCHISE LAWS AND DOCUMENTS; DISCLOSURE/REGISTRATION REQUIREMENTS [§§ 297-323]

Research References

ALR Digest to 3d, 4th, and Federal, Franchises § 14

Index to Annotations, Franchises

1. IN GENERAL; VALIDITY [§§ 297-303]

§ 297. Generally

As noted earlier, some states have enacted laws dealing directly with the franchise relationship, including statutes requiring disclosure and/or registration patterned after federal and state securities acts, for the purpose of forcing complete disclosure of the information necessary to permit prospective franchisees to make intelligent decisions prior to the purchase of the franchise.⁴ Other franchise laws are concerned with the subsequent equally difficult problem of wrongful terminations, cancellations, or nonrenewals.⁵ However, there is no great uniformity among these statutes, which have various names, including Franchise Investment Law, Franchise Practices Act, Franchise Relations Act, Franchise Disclosure Act, Franchise Registration and Disclosure Act, or, very simply, Franchise Law.⁶

A state franchise sales statute serves legitimate state interests since the state has a valid interest in protecting prospective franchisees from unscrupulous franchisors, and the protection of investors is without question a legitimate state objective.⁷

Observation: Some state franchise statutes contain an anti-waiver

4. § 292.

5. Generally as to termination, cancellation, or nonrenewal of franchises, see the discussion in § 307 et seq.

6. Horwitz and Volpe, Regulating the franchise relationship, 54 St John's L Rev 217, Winter 1980; Santoni, Franchising: a critical assessment of state and federal regulation, 14 Creighton L Rev 67, Fall 1980; Cantor, The federal and state regulation of franchises (part 1), 27 Practical Lawyer 55, Sept 1981; Cantor, The federal and state regulation of franchises (part 2), 27 Practical Lawyer 77, Oct 1981; Rudnick, The Franchise Relationship: Problem Areas for the 1980s: Part I—Government Regulation, 2 Franchise LJ 1, Summer/Fall 1982;

Casey, An Overview of Franchising Regulation, 11 ALI-ABA Course Materials Journal 53, October 1986; Selden, Public Regulation of Franchising: Choking the Goose That Lays the Golden Eggs? 9 Franchise LJ 1, Fall 1989.

American Bar Association 12th Annual Forum on Franchising (1989); Barkoff, Calvani, and Hayden, The Search for Uniformity in Franchise Sales Regulation—Don Quixote Rides Again; Bjerke, Hayden, Maxey, Ringo and Tregillus, Practical Problems under Registration and Disclosure Laws; Spandorf, An Overview of the Law and Requirements of Franchise Registration.

7. Mon-Shore Management, Inc. v Family Media, Inc. (SD NY) 584 F Supp 186.

Page 1, line
following: enacting clause
insert:

STATEMENT OF INTENT

The legislature intends to adopt most of the provisions of the Washington wholesaler/supplier equity agreement act (RCW 19.126.010 et seq.) and intends that the department of revenue look to the administrative interpretations and policies of its counterpart agency in Washington in carrying out this act. The legislature intends, however, to avoid the result stated in Birkenwald Distributing Co. v. Heublein, Inc., 55 Wash. App. 1, 776 P.2d 721 (1989), in which the court decided that the Washington act did not apply to existing contracts. In section 10 the legislature expressly declares its intent that this act apply to existing contracts, within the constitutional limits stated in Neel v. First Federal Savings & Loan Association, 207 Mont. 376, 675 P.2d 96 (1984).

p. 4, line 4
following: "(3)"
insert: "or (4)"

p. 5, line 5
following: line 4
insert: "(4) A supplier may terminate an agreement of distributorship for any other legitimate and good faith business reason, if the department of revenue finds, after opportunity for hearing to the distributor and to other interested persons, that public convenience and necessity would be served thereby."

p. 5, line 10
following: "territories"
strike: "the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor."
insert: "it shall first secure the approval of the department of revenue. The department may approve dual or overlapping territories only upon finding, after opportunity for hearing, that public convenience and necessity would be served by such appointment."

(2) An all-beverage licensee may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse such quantities of table wine as he and the distributor may agree to buy and sell.

p. 10, line 11
following: line 10
insert: "NEW SECTION. Section 10. Applicability--retroactive effect. (1) The legislature finds that the business of selling and marketing wine has been pervasively regulated in Montana for many years, and that suppliers and distributors of table wine have entered into contracts which generally contemplate that state governments may enact regulations subsequent to the execution of such contracts which will affect obligations under those contracts."

(2) This act therefore applies to all contracts written or oral, in effect in Montana as of January 1, 1991, when the bill enacting this act was introduced. To that extent this act is declared to be retroactive within the meaning of 1-2-109, MCA.

From Roger Tippet

HOUSE OF REPRESENTATIVES

1 of 2

VISITOR'S REGISTER

Business & Econ Dev.

COMMITTEE

BILL NO. HB 76DATE 1/29/91SPONSOR(S) Rep. Gould

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DIANA KOON	D of REVENUE			
Roger Tippy	Mt Beer & Wine Wholesalers	HB76		X
Robert E. Zacconi	" " Zeke's Dish	HB76		X
Peter E. Decker	Briggs Dist Co, Ellensburg	HB76		X
Bill Watkins	" " Zip Beverage "	HB76		X
CORBIN HOUGHINS	WASH. WINE INST. CRE. WINEGROWERS ASSN	HB76	X	
Kevin C. Devine	Devine & Asselstine Inc	HB76		X
BRIAN C. CLARK	FUN BEVERAGE, INC	HB76		X
DAVE HEWITT	CLAUSON Dist CO	HB76		X
ED BRANDT	CARDINAL Dist Co	HB76		X
Mina Jamison	WINE Institute	HB76	X	
SYDNEY ABRAMS	WINE INSTITUTE	76	X	
Steve Browning	Anheuser Busch Companies	76		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

2062

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Econ. Development COMMITTEE

BILL NO. HB 76

DATE Jan. 29, 1991 SPONSOR(S) Rep. Gould

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
R Budd Gould	HB Myself			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Verdon said there would be, but that does not address the objection Mr. Todd raised.

REP. BENEDICT asked if there would be a lot of objections from the bankers if the direct loan program were just limited to nonprofits. REP. BACHINI thought that would be a problem, but that is up to this Committee. When the BOI is making this kind of loans, there should be certain criteria that has to be met for everybody. However, it is up to the Committee. REP. BENEDICT did not think state government should run in competition with private businesses.

REP. HANSON pointed out it is very valid for investment rules to be set up that pretty much guarantee a return of the dollar. If the BOI is permitted to allow nonprofit organizations to obtain loans the Legislature should be liable for any bad loans. That is bad policy.

Motion/Vote: REP. SONNY HANSON moved the amendments as offered to HB 479 be adopted. Amendments were adopted unanimously.

Motion: Motion HB 479 AS AMENDED DO NOT PASS.

REP. RICE said SB 26 made major changes to the in-state investment Act, and was concerned about needing to make sure these dovetail, so since we don't know what is in SB 26, it is inappropriate to take this action right now.

Substitute Motion/Vote: REP. SHEILA RICE moved to TABLE HB 479 AS AMENDED. Motion carried with REPS. PAVLOVICH, STEPPLER, BARNETT, AND SONNY HANSEN Voting NO.

EXECUTIVE ACTION ON HOUSE BILL 76

Motion: REP. LARSON moved HB 76 DO PASS. He also moved amendments HB007603.APV EXHIBIT 4.

REP. PAVLOVICH handed out copies of a proposed Statement of Intent EXHIBIT 5, and explained the amendments in EXHIBIT 4. HB 76 deals with the wine distributors' problems, and has been before the Legislature the last three sessions. The subcommittee had concurred with proposed amendments. REP. PAVLOVICH had some reservations with one statement, but would leave it in if the Committee thought it was alright.

REP. PAVLOVICH said it would be necessary to adopt the Statement of Intent EXHIBIT 5 since the bill has rule making authority in it.

REP. BACHINI said the amendments had been heard and explained. Did the sponsor agree? REP. GOULD thought it was a pretty good compromise and if adopted the way it is, it would be a good bill. It is something that can at least be worked with and in a few

years see how it is working, and maybe at that time, something could be changed. It is very difficult to think of everything in a bill of this magnitude. He hoped the bill would be adopted and can be started to work.

REP. BACHINI asked if any other subcommittee people wished to respond to the amendments. REP. WALLIN said he had heard this bill a number of times and carried it, and is glad to see that a consensus has been reached. Both parties gave a little and held onto what was essential to them. He thought the amendments should pass.

REP. LARSON said he felt the same way. REP. PAVLOVICH and he represented the tavern industry, Roger Tippy and Mona Jamison represented the wineries in this discussion. They shared the discussion whether or not a winery had the right to withdraw a brand from a distributorship. This bill tries to address that equity situation and establish fairness to all parties involved. He recommended a Do Pass on the amendments.

REP. BACHINI asked how he felt about the amendment in Section 6. The Chairman of the subcommittee suggested the last portion of that section, starting with "The department, upon the ..." to the end of that paragraph be stricken. REP. LARSON did not remember discussing that. He didn't understand what the intent was. He didn't have any trouble with it, however.

REP. BACHINI said the Statement of Intent was included in the motion to adopt the amendments.

REP. BENEDICT stated the New Section 6 will reduce the agreement to writing and file it with the department. It will be good protection for both parties because it will be a permanent public record.

REP. PAVLOVICH said they discussed that part of the New Section 6 in their deliberations but they did not agree to it.

Motion: REP. PAVLOVICH moved the last two sentences in New Section 6 be removed.

REP. BACHINI asked with the permission of the Committee that Mona Jamison and Roger Tippy explain in a short response their views on the proposed amendments. Ms. Jamison, representing the Wine Industry, believed the amendments represent the best they could do in the subcommittee. They don't like the bill with these amendments; however, they are an improvement over the bill.

REP. PAVLOVICH advised Roger Tippy had agreed to take the last two sentences in Section 6 out, too. Ms. Jamison urged they be deleted. That never came up directly in subcommittee for discussion, so they urged that be taken out.

REP. BACHINI said the motion to strike the language in Section 6

is included in the amendments. The Statement of Intent is also included with the proposed amendments.

There were no questions on the amendments.

Vote: Unanimous adoption of the proposed amendments including the Statement of Intent and elimination of the last two sentences in the New Section 6.

Vote: Motion HB 76 DO PASS AS AMENDED WITH STATEMENT OF INTENT was adopted with REPS. CROMLEY AND STEPPLER voting NO.

EXECUTIVE ACTION ON HOUSE BILL 405

Motion: REP. WALLIN moved HB 405 DO PASS. He also moved amendments EXHIBIT 6.

REP. WALLIN explained the amendment brings the bill into conformity with the title. It was never intended that a lien could be applied against life insurance or compensation awarded people for workers' compensation claims and pay for loss of earnings, so they get something in addition to the hospitalization. Pay for loss of earnings is not to be construed as part of this. This clears that up so there is no conflict with the title.

REP. TUNBY requested response from the Insurance Department. Dave Barnhill, Deputy Insurance Commissioner, was asked to respond to the amendment. He explained this amendment would make it clear the Physicians Lien Act would not apply in certain income policies which are called disability policies by ordinary street language, so by virtue of this amendment the proceeds of the policy included in the property casualty policy or a health policy, for instance, would apply only for medical services rendered by a provider. The department supports the bill with this amendment.

Vote: Amendments were unanimously adopted.

Discussion: On HB 405 as amended. REP. WALLIN read his support of HB 405. EXHIBIT 8. There has been a lot of work done on this bill on both sides. Much of it has to do with what the bill might project in cost. This bill places Blue Cross under the same law as other insurers.

REP. STEPPLER commented whether Blue Cross has \$162 million in premiums should have absolutely no bearing on this at all. We are not here to discuss how much money they make. The second paragraph talks about patients who can't pay, and some who are not worthy of credit, this bill doesn't apply to that. Those people aren't protected by Blue Cross and Blue Shield, so the hospitals aren't going to collect from those people anyway. His problem with this is that Blue Cross has an obligation to the

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE Feb. 7, 1991

[illegible]

2:40
2-7-91
JD B

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 76 (first reading copy -- white) do pass as amended.

Signed: Bob Bachini
Bob Bachini, Chairman

And, that such amendments read:

1. Page 1, line 13.

Following: line 12

Insert: "

STATEMENT OF INTENT

Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)], regarding the designation of sales territories for wine distributors by a winery."

2. Page 2, line 19.

Strike: "; or"

Insert: "."

3. Page 2, lines 20 through 23.

Strike: subsection (3) in its entirety

4. Page 2, line 25.

Following: "provisions."

Insert: "(1) A supplier or table wine distributor may not fail or refuse to reduce to writing an agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor."

Renumber: subsequent subsections

5. Page 2, line 25 through page 3, line 1.

Following: "must" on line 25

Strike: "be in writing and must"

2:40

2-7-91

TDB

February 7, 1991
Page 2 of 1

6. Page 3, line 6 through line 10.

Following: "termination." on line 6

Strike: remainder of line 6 through line 10 in their entirety

Insert: "Notice of termination is void if within 60 days of the notice the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection."

7. Page 4, line 5.

Following: line 4

Insert: "(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5."

8. Page 5, line 6.

Following: "support"

Insert: "-- alternate supplier"

Following: "."

Insert: "(1)"

9. Page 5, line 13.

Following: line 12

Insert: "(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell."

NEW SECTION. Section 6. Applicability. Within 60 days after [the effective date of this act] or within 60 days after the conclusion of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of [this act]."

Renumber: subsequent sections

10. Page 10, lines 7 and 10.

Strike: "6"

Insert: "7"

TDB

291354SC.Hpd

Amendments to House Bill No. 76
First Reading Copy

Requested by Subcommittee on HB 76
For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 4, 1991

1. Page 2, line 19.
Strike: "; or"
Insert: "."
2. Page 2, lines 20 through 23.
Strike: subsection (3) in its entirety
3. Page 2, line 25.
Following: "provisions."
Insert: "(1) A supplier or table wine distributor may not fail or refuse to reduce to writing an agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor."
Renumber: subsequent subsections
4. Page 2, line 25 through page 3, line 1.
Following: "must" on line 25
Strike: "be in writing and must"
5. Page 3, line 6 through line 10.
Following: "termination." on line 6
Strike: remainder of line 6 through line 10 in their entirety
Insert: "Notice of termination is void if within 60 days of the notice the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection."
6. Page 4, line 5.
Following: line 4
Insert: "(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned."
7. Page 5, line 5.
Following: "support"
Insert: "-- alternate supplier"
Following: "."
Insert: "(1)"
8. Page 5, line 13.

Ex. 4
2-7-91
HB 79

Following: line 12

Insert: "(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

NEW SECTION. Section 6. Applicability. Within 60 days after [the effective date of this act] or within 60 days after the conclusion of an agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of [this act]. (The department, upon the instigation of an action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. A contract, agreement, or franchise not upon record with the department may not be considered by a court as having any force or effect.")

Renumber: subsequent sections

9. Page 10, lines 7 and 10.

Strike: "6"

Insert: "7"

HB 76 - Roger Tippy

EXHIBIT 5
DATE Feb. 7, 1991
HB 76

STATEMENT OF INTENT

Since the department of revenue has rulemaking authority under 16-1-303 (2) (m), MCA, a statement of intent may be necessary. The department should consider the rules and interpretations of the Washington wholesaler/supplier equity agreement act, RCW 19.126.010 et seq., a statute upon which many of the sections of this bill are based. It is not intended that the department adopt any rules interpreting or implementing section 3 (2), regarding the designation of sales territories for wine distributors by a winery.

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on March 8, 1991, at
10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE BILL 76

Presentation and Opening Statement by Sponsor:

Representative Bud Gould, sponsor of the bill, stated that this bill is a very fair and equitable bill. The house business committee put the bill into a subcommittee, and there were a lot of changes that were made by this subcommittee and adopted by the full committee. The changes made should satisfy both sides. This bill takes in having two distributors in an area, and how they will be fairly treated. It is fair to the wineries, it should make them feel that they have people in the state of Montana that want to do business with them, and want to stay in business with them.

Proponents' Testimony:

Representative Bob Pavlovich stated that he worked on the subcommittee on this bill in the house. This bill has been floating back and forth since 1981. This year we have come up

with a bill that is very workable. He stated that he was concerned about the language on line eighteen, page six, section five of the bill, so he proposed an amendment that will protect all of the beverage license holders in the state of Montana if something should happen between the distributor and the beverage license holder. If he doesn't like him, then he is able to buy his wine from any other distributor in the state of Montana as long as he has that license.

Brian Clark, a wholesaler from Kalispell and the president of the Montana beer and wine wholesaler's association (MBWWA), stated that the board of MBWWA has identified, and the general membership has ratified the priority of wine legislation as their single most important issue in the 1991 legislative agenda. The fundamental distinction between simply wholesaling and the beverage distributing business is the principal in concept of goodwill. Goodwill is that value added asset building concept on of a particular brand or beverage, and in this case wine. It is the amount of space, or position, of a supermarket manager is willing to allocate to a brand. Goodwill is a restaurant owners willingness to have that brand of wine carried and listed on his wine list. It is a tavern owner offering that brand of wine as their house wine, and by the glass. HB 76 is a simple matter of fairness based on well documented precedence in this state.

Robert Zucconi, representing Zeke's distributing in Helena, stated that he was dealt a very severe hand by a winery. After representing a company since 1983, he received a letter in the mail stating that after six years, his services were no longer needed. This was twenty percent of his business, and he had no resource or anything to do with this particular court. He won a settlement of "x" amount of dollars. They took it to the supreme court and they through it out because there was one letter that was not acceptable. He would have to go back for retrial, and because of the cost of retrial and time, he settled out of court. This bill will take precedence in this situation, and it is fair.

Dave Hewitt, with Clausen's distributing company in Helena, stated that he was also involved in the law suit with Robert Zucconi. They also received a letter (See Exhibit 1).

Dale Markovich, representing Butte America, stated that they do not expect permanent contracts with their wineries regardless of how well, or how poorly they prefect. They would like a relationship similar to what they have with their own employees under the wrongful discharge law. That is, if an employee consistently fouls up after reputed warnings and statements as to their expectations, they can discharge them. Our legal system, as the state's supreme court has interpreted lets them down.

Ed Brant, a wine distributor from Bozeman, Montana, stated his name in support of the bill.

Don Brocopp, representing intermountain distributing in Billings, MT, stated his name in support of the bill.

Karl Rembe, representing MBBWA in Great Falls, Montana, stated his name in support of the bill.

Pete Decker, representing Brigg's distributing in Billings, Montana, stated his name in support of the bill.

Bill Liken, representing a beverage company in Missoula,

Montana, stated his name in support of the bill.

Roger Tippy, the executive secretary and legal council of the Montana beer and wine wholesaler's association, spoke in favor of the bill (See Exhibit 2, Exhibit 2A, Exhibit 2B, Exhibit 2C, Exhibit 2D).

Opponents' Testimony:

Mona Jamieson, representing the wine institute, stated that there are wines that sit on a shelf and are not marketed. Unless you are really on the far end, you're the biggest producer, or the biggest grower, where there is a lot of popularity associated with a particular brand, sometimes the distributors treat the wineries unfairly. With that many different wineries, the smaller ones would love aggressive marketing by the distributors. That does not always happen. This bill represents for the first time in Montana, it passed the regulation of the business relationships between the growers and the distributors. This is the first franchise law that would relate to the wine industry. If the bill is passed, let's walk, and not run. The problems that are related to you, are not always one sided, it goes both ways. It is not a simple matter of fairness, it is a complicated matter of market regulation. It is the government imposing contractual provisions between the growers and the distributors. Brown-Forman treated their distributor unfairly. The distributor won, they had to pay court costs and attorney fees. California coolers is no longer marketed. You cannot continually treat distributors like that, and have the market survive. The free market place is fair to actions like that. This is a bad business relationship, where now we will have law. She proposed an amendment to the bill (See Exhibit 3).

Sydney Abrams, representing the wine institute, stated that there is a tremendous common interest between the wineries and the wholesalers in the northwest. Any winery, to be successful, must have the goodwill of the wholesaler. Small wineries cannot afford to go to court and dispute things.

Questions From Committee Members:

Senator Thayer asked if Roger Tippy had a reaction to the amendments proposed by Mona Jamieson.

Roger Tippy replied that he did. Liquidated damages, word for word, from chapter one sixty nine, Washington laws of 1984 states "annotated if it were a lawyer's relief act there would be many court decisions recorded under it", there are not. It works in Washington. Good cause, model act language suggested by the wine and spirits wholesaler's of America. Every word in that including "essential" provided such requirements are imposed from all other equally situated distributors, has been suggested by that trade association because of cases such as the Nevada case.

Senator Gage asked Mona Jamieson about the statement she made regarding clarity and fairness, and with regards to her sixth amendment.

Mona Jamieson replied the sixth amendment, they are moving

back on. She stated that amendment six should be stricken.

Senator Williams stated in Mona Jamieson's testimony, he understands that she feels that there is a need for a bill like this, but it needs to be tuned up a little bit.

Mona Jamieson replied no. Let the free market work, let the people contract. We should fine tune this bill to Montana.

Senator Lynch asked about page four of the bill, on the mention of the fair market price. You shouldn't measure doing away with a wine distributorship based on the price of the whole business, because eighty percent of the business is probably the beer business.

Roger Tippy replied that the business that they are talking about is the business in that particular brand.

Senator Lynch asked that Roger Tippy clarify this, and stated that he wasn't going to appoint a formal subcommittee, but would like anyone interested to meet with him at three o'clock on Monday.

Closing by Sponsor:

Representative Gould closed by saying that this bill is walking and not running. This bill was patterned after a Washington law. The bill two years ago was running, it was patterned after the Michigan legislation. This bill is about an important matter that the committee should keep in mind.

HEARING ON HOUSE BILL 479

Presentation and Opening Statement by Sponsor:

Representative Harriet Hayne stated that HB 479 would enable the board of investments to allow certain non profit corporations to qualify for in state investments of the state's funds. At present, they are not allowed to do so. This bill would not require the board of investments to make buildings, and expansion loans to non profit organizations. It would require them to consider those good and reliable loan requests from those sources who have proved to have a good and dependable record in repaying loans in past business operations.

Proponents' Testimony:

Dave Lewis, executive director of the Montana board of investments, stated that the board has never done loans based on profits. When the coal tax loan program started, there was a concern there was going to be so much of a demand for the loans, that they should be restricted to non profit organizations. Over the last ten years that they have been running the program, they found that they do have enough money. They would adopt rules that would require any loans would have to have new jobs attached to them. They would have to meet the same criteria as the other loans that they do.

Robert MacGilvra, a member of the board of director's for the horizon lodge, stated that horizon lodge presently serves one

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE

3/8/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	X		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Joseph C. Schrage	R.V. Lemon Law	HB 816	✓	
Walter W. Schrage	Lemon Law	HB 816	✓	
Mr and Mrs Frank Reinisch	R.V. Lemon Law	HB 816	✓	
EROME D. WINES	R.V. " "	HB 816		
R Budd Gould	Sponsor	HB 76	✓	
JACK HAYLIE	Cup	HB 479	✓	
B. H. Warkent	Beer & Wine Business	HB 76	✓	
DAVE Hewitt	Beer & Wine Dist.	HB 76	✓	
Ed BRANDT	Beer & Wine Dist.	HB 76	✓	
Dale Mackovich	Beer & Wine Dist.	HB 76	✓	
Harf Rembe	M.B.W.A.	HB 76	✓	
Artie Neckop	Briggs & Stratton	HB 76	✓	
Brian C. Platt	Beer & Wine Business	HB 76	✓	
Robert Zucconi	Beer & Wine Dist.	HB 76	✓	
Diana Kaon	Dry Cleaning	HB 76	—	—
GENE PHILLIPS	MT. LAND TITLE Assoc.	HB 779	X	
Mona Jansson	WINE INSTITUTE	HB 76		X
Sydney Abrams	Wine Institute - Calif, Oregon & Wash.	HB 76		✓
Don Brocopp	Intermountain Dist.	HB 76	X	
Robert MacCormack	Horizon Lodge	HB 479	X	
Dave Jensen	Board of Investment	HB 479	X	
Steve Stanley	C.E.O. Horizon Lodge	HB 479	X	
Bob Pyfer	MT Credit Unions League	779	X	

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 8 day of March, 1991.

Name: Sydney ABRAMS

Address: POB 3

Telephone Number: 206-232-5171

Representing whom?

Wine Institute (CA)

Appearing on which proposal?

HB 76

Do you: Support? Amend? Oppose? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 8th day of March, 1991.

Name: Mona Janssen

Address: Power Block, Suite 42
Helena, Mt 59601

Telephone Number: (406) 442-5581

Representing whom?

WIFE Institute

Appearing on which proposal?

113 76

Do you: Support? ☐ Amend? ☐ Oppose? ☒

Comments:

Bill goes to far in terms of
regulating contractual relationships
between winery + distributor.

EXHIBIT "B"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 3/8/91

BILL NO. HB 76

Brown-Forman Corporation

• • • • • LOUISVILLE, KY 40201 • • • • •

February 12, 1987

Mr. Robert Clausen, Owner
CLAUSEN'S DISTRIBUTING COMPANY
PO BOX 238
Helena, MT 59624

Dear Robert:

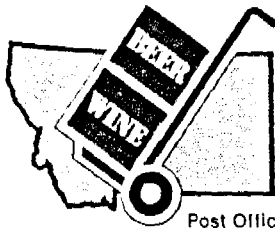
As you know, Brown-Forman has recently announced a major reorganization of its sales organization. The four selling divisions — Jack Daniel Distillery, B-F Spirits Ltd., The Jos. Garneau Co. and California Cooler Company — were consolidated into a single sales force. Our reorganization was done to recognize changing market conditions, to make Brown-Forman more competitive, and to maintain Brown-Forman's position as a major beverage marketer in the future.

To accomplish our goals, Brown-Forman intends to continue its long-term policy of distributor consolidation, wherever possible, to make its new organization more effective in an increasingly competitive marketplace.

The need for a definitive understanding of our business relationship has never been more important. Therefore, we will require your execution of a standard contract for California Cooler products and, in the very near future, a standard contract covering Brown-Forman products currently sold by you. Your refusal to execute an agreement covering Brown-Forman products currently distributed will be detrimental to our continued relationship and could ultimately lead to a termination of our relationship.

I trust you will share our desire for a contract and will find the proposed agreement fair and equitable when you have an opportunity to review it.





Montana
Beer & Wine
Wholesalers
Association

Post Office Box 124 • Helena, Montana 59624 • Telephone (406) 442-4451

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/8/91
BILL NO. HB 76

BEFORE THE BUSINESS & INDUSTRY COMMITTEE
MONTANA SENATE

Hearing on HB76	)	TESTIMONY
(Wine Distribution Act)	)	IN SUPPORT
March 8, 1991	)	

The most common reasons state legislatures enact laws regulating private franchise contracts are that the parties do not have equal bargaining power and that one party is likely to engage in coercive or oppressive behavior. The courts, asked to apply traditional contract law, don't take these market conditions into account because inequality, coercion and the like are more appropriately legislative judgments. The common law doesn't work, as Mr. Zucconi's story so clearly shows.

House Bill 76 is not an unusual idea in the codes of Montana or of most other states. Besides the 1974 law regulating beer distributing agreements, this legislature has enacted laws for the automobile dealers in 1977 and for the farm implement dealers in 1983, extending the latter statute to cover snowmobiles, motor-cycles and recreational vehicles in 1989. One of our exhibits shows how widespread the enactment of franchise laws has been in all 50 states. About 20 of the states have enacted laws which cover the winery-wine distributor relationship. We have looked at most of them and selected the law of the state of Washington as our model.

The Washington law is weaker than many of the other state's laws. It does not provide for exclusive territory. It does not provide for attorneys' fees for a distributor who prevails in a lawsuit to enjoin or recover damages for a cancellation. And it does not define good cause.

We have gone along with the Washington law in most of these concessions to the wineries. The difference is that we have suggested a statutory definition of "good cause." This is because

§ 295. State Localizer

ALABAMA:

Deceptive Trade Practices Act (Ala Code) §§ 8-19-1 to 8-19-15.
 Motor Vehicle Franchise Act (Ala Code) §§ 8-20-1 to 8-20-12.
 Farm Equipment Inventory (Ala Code) §§ 8-21-1 to 8-21-14.
 Motor Fuel Marketing Act (Ala Code) §§ 8-22-1 to 8-22-18.
 Liquor (Ala Code) §§ 28-8-1 to 28-8-8.

ALASKA:

Gasoline Products Leasing Act (Ak Stat) §§ 45.50.800 to 45.50.850.

ARIZONA:

Motor Vehicle Act (Ariz Rev Stat) §§ 28-1302, 28-1304.02.
 Petroleum Products Franchises (Ariz Rev Stat) §§ 44-1551, 44-1559.
 Termination of Beer and Liquor Franchises (Ariz Rev Stat) §§ 44-1565 to 44-1567.

ARKANSAS:

Franchise Practice Act (Ark Stat Annot) §§ 4-72-201 to 4-72-209 (formerly §§ 70-807 to 70-817).
 Gasoline Distributors and Dealers Acts (Ark Stat Annot) §§ 4-72-401 to 4-72-403 (formerly §§ 53-1001 to 53-1003); 4-72-501 to 4-72-503 (formerly §§ 53-1101 to 53-1103).
 Farm Equipment Retailer Protection Act (Ark Stat Annot) §§ 4-72-301 to 4-72-309 (formerly §§ 70-819 to 70-826).
 Arkansas Motor Vehicle Commission Act (Ark Stat Annot) §§ 23-112-101 to 23-112-105, 23-112-201 to 23-112-205, 23-112-301 to 23-112-311, 23-112-402 to 23-112-406, 23-112-501 to 23-112-509 (formerly §§ 75-2301 to 75-2312).

CALIFORNIA:

Franchise Investment Law (Ca Corp Code) §§ 31000 to 31516 (disclosure and registration requirements).
 Permit Processing Times (Ca Admin Code) §§ 250.50, 250.51.
 Franchise Relations Act (Ca Bus and Prof Code) §§ 20000 to 20043 (relationship termination and renewal laws).
 Contracts for Seller-Assisted Marketing Plans (Ca Civil Code) §§ 1812.200 to 1812.220 (business opportunity laws).
 Automobile Dealers Act (Ca Veh Code) §§ 3060 to 3069.
 Petroleum Dealers and Distributors (Ca Bus and Prof Code) §§ 20999 to 20999.4.
 California Fair Dealership Law (Ca Civil Code) §§ 80 to 86.
 Relocation of Franchises in Shopping Centers (Laws of 1980, Ch 1355 § 5).
 Discrimination (Ca Civ Code) Div 1, Part 2 § 51.8.

COLORADO:⁹³

Automobile Dealers (Colo Rev Stat) §§ 12-6-101, 12-6-102, 12-6-118 to 12-6-122, 12-6-301 to 12-6-303.
 Farm Implements (Colo Rev Stat) §§ 35-38-101 to 35-38-110.

CONNECTICUT:⁹⁴

Termination and Renewal Law (Conn Gen Stat) §§ 42-133e to 42-133h.

93. McKenzie, Franchise regulation (Colo) 15 anybody here play this game? 54 Conn BJ 446, Colo Lawyer 395(3), March 1986.

94. Farrell, Franchising in Connecticut—can

Business Opportunities Law (Conn Gen Stat) §§ 36-503 to 36-521.
 Petroleum Product Franchisors (Conn Gen Stat) §§ 42-133j to 42-133n.
 Liquor Dealers (Conn Gen Stat) § 30-17.
 Automobile Dealerships (Conn Gen Stat) §§ 42-133r to 42-133ee.

DELAWARE:

Prohibited Trade Practices (Del Code Annot) §§ 6-2551 to 6-2564.
 Retail Sales of Motor Fuel (Del Code Annot) §§ 6-2901 to 6-2912.
 Motor Vehicle Franchising Practices Act (Del Code Annot) §§ 6-4901 to 6-4918.
 Pyramid or Chain Distribution Schemes (Del Code Annot) §§ 6-2561 to 2564.
 Equipment Dealer Contracts (Del Code Annot) §§ 6-2720 to 6-2727 (construction, farm, industrial or outdoor power equipment).

FLORIDA:

Misrepresentation Law (Fla Stat Annot) § 817.416.
 Business Opportunity Law (Fla Stat Annot) §§ 559.80 to 559.815.
 Motor Vehicle Dealers (Fla Stat Annot) §§ 320.64 et seq.
 Farm Equipment (Fla Stat Annot) §§ 686.201 to 686.418.
 Motor Fuel (Fla Stat Annot) §§ 526.301 to 526.3135.
 Beer (Fla Stat Annot) § 563.022.

GEORGIA:⁹⁵

Sale of Business Opportunities (Geo Code) §§ 10-1-410 to 10-1-416.
 Gasoline Marketing Practices Act (Geo Code) §§ 10-1-230 to 10-1-241.
 Motor Vehicle Franchise Practices Act (Geo Code) §§ 10-1-620 to 10-1-663.
 Farm Equipment (Geo Code) §§ 13-8-31 to 13-8-45.
 Optical Firms (Geo Code) § 43-30-5.1.

HAWAII:

Franchise Investment Law (HI Rev Stat) §§ 482E-1 to 482E-12.
 Automobile Dealers Act (HI Rev Stat) § 437-28(b).
 Gasoline Dealers Act (HI Rev Stat) §§ 486H-1 to 486H-9.
 Office Machines (HI Rev Stat) §§ 481G-1 to 481G-8.

IDAHO:

Farm Implement Dealers (ID Code) §§ 28-23-101 to 28-23-111.
 Automobile Dealers (ID Code) § 49-2414.
 Beer Distributors (ID Code) § 23-1033A.
 Wine Distribution (ID Code) § 23-1328A.

ILLINOIS:

Franchise Disclosure Act of 1987, Laws 1987, P.A. 35-551 §§ 1 to 44.
 Motor Vehicle Franchise Act (Ill Rev Stat) Ch 121 1/2 §§ 751 to 764.
 Farm, Industrial and Outdoor Power Equipment Fair Dealership Act (Ill Rev Stat) Ch 5 §§ 1501 to 1511.
 Beer Wholesalers (Ill Rev Stat) Ch 43 §§ 301.1 to 302.

INDIANA:

Indiana Franchise Disclosure Law (Ind Code) §§ 23-2-2.5-1 to 23-2-2.5-50.
 Indiana Deceptive Franchise Practice Law (Ind Code) §§ 23-2-2.7-1 to 23-2-2.7-7.

95. Branch, Franchising in Georgia, 24 Ga St BJ 92, Nov 1987.

Indiana Business Opportunity Transactions Act (Ind Code) §§ 24-5-8-1 to 24-5-8-21.

Motor Vehicle Code (Ind Code) §§ 9-10-1-1 to 9-10-5-5.

Beer Distributors (Ind Code) § 7.1-5-5-9.

IOWA:

Business Opportunity Sales Law (Iowa Code) §§ 523B.1 to 523B.11.

Motor Vehicle Franchisors (Iowa Code) §§ 322A.1 to 322A.17.

Marketing and Distribution of Motor Fuel and Special Fuel (Iowa Code) §§ 323.1 to 323.13, 323A.1 to 323A.3.

Farm Implements, Motorcycle and Parts Franchises (Iowa Code) §§ 322D.1 to 322D-8.

KANSAS:

Motor Vehicle Dealers (Kans Stat Annot) §§ 8-2401 et seq., (formerly §§ 8-2301 to 8-2323).

Farm Equipment Dealers (Kans Stat Annot) §§ 16-1001 to 16-1006.

Liquor Franchisors (Kans Stat Annot) §§ 41-410 to 41-411.

KENTUCKY:

Sale of Business Opportunities (Ky Rev Stat) §§ 367.801 to 367.819, 367.990.

Motor Vehicle Dealers (Ky Rev Stat) §§ 190.010 to 190.080.

LOUISIANA:

Business Opportunity Sellers and Agents (La Rev Stat) §§ 51:1821 to 51:1824.

Service Station Dealers Day in Court Law (La Rev Stat) §§ 51:1451 to 51:1454.

Motor Vehicle Dealers (La Rev Stat) § 32:1254A(4)(c).

Farm Equipment Dealers (La Rev Stat) §§ 51:481 to 51:487.

Sales Representatives (La Rev Stat) §§ 51:441 to 51:445.

Real Estate Agencies (Laws of 1983, Pub. Law No. 83-381).

Marine Products (Laws of 1987, Act 168).

Motorcycles (Laws of 1988, Act 327).

Motorcycles and ATV's (Laws of 1988, Act 820).

MAINE:

Business Opportunity Law (Maine Rev Stat Annot) Title 32, Ch 69-B §§ 4691 to 4700-B.

Motor Vehicle (Maine Rev Stat Annot) Title 10, Ch 204 §§ 1171 to 1186.

Motor Fuel Distribution Act (Maine Rev Stat Annot) Title 10, Ch 215 §§ 1451 to 1456.

Wine Franchises (Maine Rev Stat Annot) Title 28-A, Ch 57, §§ 1451 to 1465.

MARYLAND:

Franchise Registration and Disclosure Act (Annot Code of Md) Art 56 §§ 345 to 365D.

Franchise Registration and Disclosure Regulations Title 02, subtitle 02, Ch 10; State Law Dept, Div of Securities.

Business Opportunities Sales Act (Annot Code of Md) Art 56 §§ 401 to 415.

Gasoline Products Marketing Act (Annot Code of Md—Art Commercial Law, Title 11) §§ 11-301 to 11-308.

Beer Franchise Fair Dealing Act (Annot Code of Md) Art 2B §§ 203A to 203G.

Equity Participation Investment Program Law (Statute Extending Program to Franchising) (Annot Code of Md) Art 13 §§ 235 to 241.

MASSACHUSETTS:

Automobile Dealers' Act (Mass Gen Laws) Ch 93B §§ 1 to 15.

Gasoline Dealers' Act (Mass Gen Laws) Ch 93E §§ 1 to 9.

Alcoholic Liquors (Mass Gen Laws) Ch 138 § 25E (Unfair Trade Practices).

MICHIGAN:

Franchise Investment Law (Mich Compiled Laws) §§ 445.1501 to 445.1545.*

Business Opportunity Act (Mich Compiled Laws) § 445.902.

Motor Vehicle Dealers (Mich Compiled Laws) §§ 445.1561 to 445.1583.

Farm and Utility Equipment Franchise Act (Mich Compiled Laws) §§ 445.1451 et seq.

Beer and Wine Wholesalers (Mich Compiled Laws) §§ 436.30a to 436.30d.

MINNESOTA:

Franchise Law (Minn Stat) §§ 80C.01 to 80C.22 (includes relationship termination and renewal provisions).*

Powers of Commissioner of Commerce (Minn Stat) §§ 45.026 to 45.028 (includes investigation, hearing and enforcement powers pertaining to Ch 80C).

Automobile Dealers (Minn Stat) §§ 80E.01 to 80E.18.

Farm Implement Dealers (Minn Stat) § 325E.05.

Brewers and Beer Wholesalers (Minn Stat) §§ 325B.01 to 325B.17.

Motor Fuel Dealers (Minn Stat) § 80C.145.

Burglar Alarm Franchises (Minn Stat) § 80C.30.

MISSISSIPPI:

Pyramid Sales Schemes (Miss Code Annot) §§ 75-24-51 to 75-24-61 (termination and renewal laws).

Motor Vehicle Commission Act (Miss Code Annot) §§ 63-17-51 to 63-17-139.

Inventory Repurchase (Miss Code Annot) §§ 75-77-1 to 75-77-19.

MISSOURI:

Merchandising Practices Act (Mo Rev Stat) §§ 407.400 to 407.420 (includes pyramid sales law and termination law).

Farm Machinery Dealers' Dealership Agreements. Inventory Act (Mo Rev Stat) §§ 407.838 to 407.848.

Farm Implement Manufacturer or Distributors—Repurchase of Retail Inventories (Mo Sess Laws, Mo Rev Stat) §§ 407.850 to 407.885.

Motor Vehicle Franchise Practices Act (Mo Rev Stat) §§ 407.810 to 407.835.

MONTANA:

Automobile Dealers (Mont Code Annot) §§ 61-4-201 to 61-4-210.

Brewers and Beer Sellers (Mont Code Annot) §§ 16-3-221 to 16-3-226.

NEBRASKA:

96. May and Steinberg, Great expectations: 1984 amendments to the Michigan Franchise Investment Law, 64 Mich BJ 32, Jan 1985; Foley, The Slippery Slope of Renewal of Notice Filing under Michigan's Franchise Investment

Law, 8 Franchise LJ 3, Spring 1989.

97. Alden, Overview of franchising for general practitioner, 54 Hennepin Lawyer 12 (May-June 1985).

Automobile Dealers (Utah Code Annot) Title 41, Chs 3 and 4.
Gasoline Products Marketing Act §§ 13-12-1 to 13-12-8.

VERMONT:

Motor Vehicle Dealers Act (Vt Stat Annot) Title 9, Ch 107 §§ 4083 to 4100.

Gasoline Service Station Franchises (Vt Stat Annot) Title 9, Ch 109 §§ 4101 to 4109.

Beer and Wine Franchises (Vt Stat Annot) Title 7, Ch 23 §§ 701 to 708.

VIRGINIA:

Retail Franchising Act (Va Code) §§ 13.1-557 to 13.1-574.²

Business Opportunity Sales Act (Va Code) §§ 59.1-262 to 59.1-269.

Petroleum Products Franchise Act (Va Code) §§ 59.1-21.8 to 59.1-21.18.1

Motor Vehicle Dealers (Va Code) §§ 46.1-546 to 46.1-550.5.

Beer Franchise Act (Va Code) §§ 4-118.3 to 4-118.20.

WASHINGTON:

Franchise Investment Protection Act (Wash Rev Code) §§ 19.100.010 to 19.100.940.

Business Opportunities Fraud Act (Wash Rev Code) §§ 19.110.010 to 19.110.930.

Motor Vehicles Dealers (Wash Rev Code) §§ 46.70.180(11), 46.70.190.

Farm Implement Dealers (Wash Rev Code) §§ 19.98.010 to 19.98.910.

Beer and Wine Wholesale Distributor Supplier Equity Act Wash 1984 Session Laws, Ch 169.

Gasoline Dealers' Bill of Rights Act 1986 Reg Session Laws, Ch 320.

WEST VIRGINIA:

Brewers and Beer Distributors Act (W Va Code) §§ 11-16-12a, 11-16-13b.

Motor Vehicle Manufacturers and Dealers (W Va Code) §§ 47-17-1 to 47-17-10. Repealed and replaced by Laws 1982, House Bill 1927, eff June 10, 1982 [now §§ 17A-6A-1 et seq.].

Petroleum Products Franchise Act (W Va Code) §§ 47-11C-1 to 47-11C-8.

WISCONSIN:

Franchise Investment Law (Wis Stat Annot) §§ 553.01 to 553.78.

Fair Dealership Law (Wis Stat Annot) §§ 135.01 to 135.07.

Automobile Dealers' Act (Wis Stat Annot) § 218.01(3)(a).

WYOMING:

Motor Vehicle Franchise Act (Wyo Stat Annot) §§ 40-15-101 to 40-15-109.

Repurchase of Farm Machinery Act (Wyo Stat Annot) §§ 40-18-101 to 40-18-107.

Practice guide: For a detailed analysis of franchise relationship laws, including popular names, types of law, statutory examples of good cause for termination, procedural requirements for termination and nonrenewal, and examples of other unlawful practices under various state statutory provisions, see the appendices following the article cited below.³

§ 296. —Other jurisdictions**PUERTO RICO:**

Dealers' Contracts Act (PR Laws Annot) Title 10, Ch 14 §§ 278 to 278d (termination).

2. Clinard and Peters, The Virginia experience: retail franchise regulation, 9 Va BAJ 20, Spring 1983.

3. Pitegoff, Franchise Relationship Laws: A Minefield for Franchisors, 45 Business Lawyer 289 (Nov. 1989), at pp 321 et seq.

VIRGIN ISLANDS:

Consumer Protection Law Title 12A §§ 130-139 (Franchised Businesses).

ALBERTA, CANADA:

Franchises Act (Alb Rev Stat) Ch F-17 (disclosure and registration requirements).

Franchises Regulations Alberta Regulation 201/72.

B. FRANCHISE LAWS AND DOCUMENTS; DISCLOSURE/REGISTRATION REQUIREMENTS [§§ 297-323]

Research References

ALR Digest to 3d, 4th, and Federal, Franchises § 14
Index to Annotations, Franchises

1. IN GENERAL; VALIDITY [§§ 297-303]

§ 297. Generally

As noted earlier, some states have enacted laws dealing directly with the franchise relationship, including statutes requiring disclosure and/or registration patterned after federal and state securities acts, for the purpose of forcing complete disclosure of the information necessary to permit prospective franchisees to make intelligent decisions prior to the purchase of the franchise.⁴ Other franchise laws are concerned with the subsequent equally difficult problem of wrongful terminations, cancellations, or nonrenewals.⁵ However, there is no great uniformity among these statutes, which have various names, including Franchise Investment Law, Franchise Practices Act, Franchise Relations Act, Franchise Disclosure Act, Franchise Registration and Disclosure Act, or, very simply, Franchise Law.⁶

A state franchise sales statute serves legitimate state interests since the state has a valid interest in protecting prospective franchisees from unscrupulous franchisors, and the protection of investors is without question a legitimate state objective.⁷

Observation: Some state franchise statutes contain an anti-waiver

4. § 292.

5. Generally as to termination, cancellation, or nonrenewal of franchises, see the discussion in § 307 et seq.

6. Horwitz and Volpe, Regulating the franchise relationship, 54 St John's L Rev 217, Winter 1980; Santoni, Franchising: a critical assessment of state and federal regulation, 14 Creighton L Rev 67, Fall 1980; Cantor, The federal and state regulation of franchises (part 1), 27 Practical Lawyer 55, Sept 1981; Cantor, The federal and state regulation of franchises (part 2), 27 Practical Lawyer 77, Oct 15, 1981; Rudnick, The Franchise Relationship: Problem Areas for the 1980s: Part I—Government Regulation, 2 Franchise LJ 1, Summer/Fall 1982;

Casey, An Overview of Franchising Regulation, 11 ALI-ABA Course Materials Journal 53, October 1986; Selden, Public Regulation of Franchising: Choking the Goose That Lays the Golden Eggs? 9 Franchise LJ 1, Fall 1989.

American Bar Association 12th Annual Forum on Franchising (1989); Barkoff, Calvani, and Hayden, The Search for Uniformity in Franchise Sales Regulation—Don Quixote Rides Again; Bjerke, Hayden, Maxey, Ringo and Tregillus, Practical Problems under Registration and Disclosure Laws; Spandorf, An Overview of the Law and Requirements of Franchise Registration.

7. Mon-Shore Management, Inc. v Family Media, Inc. (SD NY) 584 F Supp 186.

DISTRIBUTOR CONTRACT

THIS AGREEMENT made and entered into this, the _____ day of _____, 19____, by and between _____ COMPANY, a division _____ with principal offices at _____ hereinafter called "COMPANY," and _____ of _____ hereinafter called "DISTRIBUTOR;"

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2B

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2B
DATE 3/8/91
FILE NO. HB 76

WITNESSETH:

WHEREAS, COMPANY is a producer, importer and distributor of spirits, wines, and speciality beverage products,

WHEREAS, DISTRIBUTOR warrants it is a licensed distributor of spirits and wines in the State of Montana and holds the necessary federal, state, and local permits authorizing it to distribute such beverages within the state and

WHEREAS, both COMPANY and DISTRIBUTOR desire that DISTRIBUTOR serve as a distributor of COMPANY in the State of Montana, and to define the responsibilities of both parties.

NOW, THEREFORE, for and in consideration of the premises and the further agreements herein contained, the parties agree as follows:

1. COMPANY appoints DISTRIBUTOR a distributor of the following listed products* of COMPANY (hereinafter referred to as "COMPANY'S PRODUCTS"):

within the following territory in the State of Montana

COMPANY'S policy is to consolidate our brands with one distributor when possible. COMPANY will adjust items authorized to be sold by DISTRIBUTOR to accomplish our mutual goals to consolidate all brands in such a manner as to enhance efficient and profitable sale and promotion of its brands.

***Note: COMPANY PRODUCTS added to or deleted from the listed products will be subject to all the terms and conditions of this agreement and will be incorporated by reference.**

2. The territory described herein shall be the area of primary responsibility of DISTRIBUTOR. DISTRIBUTOR shall devote its principal selling, promotional, marketing and distribution efforts to all licensed retailers located within the territory.

3. During the term of this agreement, COMPANY will sell to DISTRIBUTOR and DISTRIBUTOR will buy from COMPANY all of COMPANY'S DESIGNATED PRODUCTS in such quantities as are necessary to fill DISTRIBUTOR'S requirements to meet the demand therefor in said territory; provided, however, that COMPANY'S PRODUCTS may not always be available to fill all orders and COMPANY shall have the right to allocate to DISTRIBUTOR such proportion of the available supplies of COMPANY'S PRODUCTS as COMPANY, in its sole discretion, shall determine. DISTRIBUTOR acknowledges that in the normal course of business an "adequate inventory" by brand as determined and communicated by COMPANY is to be maintained in order to properly service retail outlets in the territory.

4. DISTRIBUTOR will furnish to COMPANY, in the form requested by it, sales and inventory records showing its sales and closing inventory of COMPANY'S PRODUCTS for the preceding month, which report shall be furnished to COMPANY not later than the 5th working day of the month following the reporting period. In addition, as requested by COMPANY, DISTRIBUTOR shall furnish in a timely manner reasonable marketing information, such as, distribution surveys, key account information and sales figures, account-sold reports, and similar type information relating to field activities in order for the COMPANY to be fully informed for analysis of the territory. COMPANY shall, upon reasonable notice, have the right to take a physical inventory of COMPANY'S PRODUCTS stored in DISTRIBUTOR'S warehouses.

5. (a) DISTRIBUTOR will exert its best efforts to develop the full potential for, and diligently sell, distribute and promote said COMPANY'S PRODUCTS, in all licensed retail outlets in the territory. DISTRIBUTOR will exert its best efforts to maintain and grow the market share of COMPANY'S PRODUCTS considering the regional and/or national performance of the individual brands and the general business climate including marketing support by the COMPANY.

(b) DISTRIBUTOR will be responsible for proper distribution services for all COMPANY'S PRODUCTS purchased by DISTRIBUTOR. Proper distribution services will be defined by COMPANY and communicated to DISTRIBUTOR in a set of written distribution standards which shall include, but shall not be limited to, requiring its salesmen to personally contact all retailers within the territory normally covered by DISTRIBUTOR at reasonable intervals in an attempt to sell COMPANY'S PRODUCTS, maintaining an adequately trained sales management team and sales force to properly represent and promote such sales, proper stock rotation so as to maintain product quality, proper shelf and cold box conditions by brand as communicated by COMPANY, proper execution of COMPANY'S

promotional programs by utilization of point-of-sale, floor, and other display materials, and maintenance of in-stock conditions for COMPANY'S PRODUCTS in each individual store, wherever located, selling COMPANY'S PRODUCTS.

6. The prices at which COMPANY shall sell its products to DISTRIBUTOR and the prices at which DISTRIBUTOR shall buy COMPANY'S PRODUCTS shall be the prices currently in effect in the territory at the time of shipment, with the right reserved by COMPANY to change its prices, in its sole discretion, from time to time on fifteen (15) days' notice, except that any price change brought about by taxation may be accomplished without such notice.

7. Each order submitted by DISTRIBUTOR to COMPANY shall be subject to COMPANY'S acceptance at its home office in [REDACTED] Terms of payment stipulated by COMPANY on each invoice to DISTRIBUTOR shall represent the terms of payment with respect to each individual shipment and shall be of the essence of this contract. The amount and terms of credit extended by COMPANY to DISTRIBUTOR shall be in the sole discretion of COMPANY.

8. DISTRIBUTOR will not resell any of COMPANY'S PRODUCTS at less than the minimum wholesale prices prescribed by law or regulation, and will file such minimum resale prices as are prescribed by COMPANY; provided, however, that when applicable law prevails or otherwise modifies such provision, applicable law shall control and DISTRIBUTOR shall not be required to carry out any policies that involve discriminatory prices, discounts, rebates, free goods or any violation of federal, state or local laws or regulations.

9. All of COMPANY'S PRODUCTS sold and distributed under this contract shall be bottled, packaged and labeled in conformity with applicable federal, state and local laws, rules and regulations, shall be sound and merchantable, and shall meet all standards of quality imposed by federal law and the laws of the state wherein the products are to be distributed.

10. In the event of damage to any of COMPANY'S PRODUCTS rendering the contents unfit for consumption or the containers unsightly or otherwise not of first-class appearance, DISTRIBUTOR shall not sell or permit the same to become the property of any insurer or carrier, nor otherwise dispose thereof except in accordance with prior written instructions of COMPANY.

11. Either party may cancel this contract FOR CAUSE upon any of the following grounds:

(a) The appointment of a trustee, receiver or other similar custodian for all or any part of the other party's property.

(b) Insolvency of the other party.

(c) The filing of a petition by the other party or an answer, not denying jurisdiction, in bankruptcy or under Chapter X or XI of the Federal Bankruptcy Act or similar law, state or federal, whether now or hereafter existing, or if such a petition is filed against the other party and not vacated or stayed within fifteen (15) days.

(d) The making by the other party of an assignment for the benefit of creditors.

(e) An attachment of the other party's property or any part thereof or the filing of any like process against it which is not discharged within thirty (30) days.

(f) The rendition of a judgment against the other party which remains unsatisfied or unsuperseded for thirty (30) days.

(g) The loss by the other party of any federal, state or local license required for the carrying out of the provisions of this agreement, whether lost through revocation, failure to renew, or suspension of thirty (30) days or more.

(h) Sale or transfer by the other party of its physical assets, a majority of its stock or ownership, or control of the business. "Control" shall be defined as those persons who have the legal ability to elect or name the executive management of the DISTRIBUTOR organization. This clause shall be applicable to any installment sales by contract (or otherwise), whether express or implied.

(i) The enactment of a law making the sale of the products covered by this agreement illegal in DISTRIBUTOR'S territory.

(j) The failure by either party to materially satisfy any of the terms, conditions, or agreements contained herein.

In the event of cancellation for cause, such cancellation shall become immediately effective, and DISTRIBUTOR shall have no rights for any recovery for any voluntary cooperative advertising or otherwise, and COMPANY shall have the immediate right to pick up all COMPANY'S PRODUCTS in the hands of DISTRIBUTOR at laid-in cost to DISTRIBUTOR, in COMPANY'S sole discretion, to ship or to require DISTRIBUTOR to ship said goods, f.o.b. DISTRIBUTOR'S place of business or other designated point.

12. (a) This contract may be cancelled by either party WITHOUT CAUSE upon ninety (90) days' written notice; provided, however, that when a longer time is required by state or local law, the provision of the state or local law regarding time of notice shall prevail. Orders during the ninety-day (90) period shall be limited to only what is reasonably necessary to service existing customers. (b) In the event this contract is cancelled by COMPANY without cause, COMPANY will, if requested by DISTRIBUTOR, pick up all merchandise at delivered cost, less state tax, at the end of such ninety-day (90) period. If during such ninety-day (90) period, in the opinion of COMPANY, COMPANY'S PRODUCTS are not properly merchandised or handled by DISTRIBUTOR, COMPANY shall have the right to immediate possession of all such products. Any goods picked up by COMPANY from DISTRIBUTOR upon termination of this contract by COMPANY under this section shall be at laid-in cost, less state tax, to DISTRIBUTOR, plus any non-refundable gallonage taxes on the goods paid by DISTRIBUTOR, and the DISTRIBUTOR will ship the same at the direction of COMPANY, f.o.b. DISTRIBUTOR'S place of business or such other point as may be designated by COMPANY. Nothing herein contained shall be construed as being in bad faith because

COMPANY elects to exercise the provisions of this clause.

13. In the event of cancellation of this agreement by COMPANY as provided in Paragraph 12:

(a) If there has been any voluntary cooperative advertising by DISTRIBUTOR with the written approval of COMPANY, all advertising dollars so spent by DISTRIBUTOR for the twelve (12) months next preceding the date of notice of cancellation shall be refunded to DISTRIBUTOR by COMPANY. Such payment by COMPANY to DISTRIBUTOR shall be in full and complete discharge of any and all rights of each party against the other for any claims arising out of such voluntary cooperative advertising.

(b) When cancellation occurs COMPANY will pay to DISTRIBUTOR an amount equal to one and one-half percent (1-1/2%) of DISTRIBUTOR'S purchases of each of COMPANY'S PRODUCTS less federal excise tax, Customs duty, and state tax during the two (2) years next preceding the effective date of cancellation.

(c) The amounts to be paid under paragraph (b) above shall be computed upon COMPANY'S invoice prices less federal excise tax, Customs duty, and state tax. COMPANY'S PRODUCTS in the hands of DISTRIBUTOR on the effective date of cancellation shall not be used in computing the amount to be paid under paragraph (b) above.

(d) The payments provided for in paragraph (b) above shall be in full and complete discharge of any and all claims, whether statutory or otherwise, of DISTRIBUTOR against COMPANY for cancellation of this contract by COMPANY.

14. All advertising of COMPANY'S PRODUCTS shall be under the supervision and direction of COMPANY, and no advertising shall be conducted by DISTRIBUTOR except with the written approval of COMPANY. Further, DISTRIBUTOR will not sell or otherwise do business under any name or designation containing a trade name or trademark associated with any of COMPANY'S PRODUCTS without COMPANY'S prior written permission.

15. DISTRIBUTOR will promptly notify the COMPANY in writing of any instance of infringement, misuse, or other abuse of the trademarks of the COMPANY'S PRODUCTS, which may come to the notice of DISTRIBUTOR.

16. This agreement is personal in nature and unless it is otherwise agreed in writing, this contract shall not be assignable.

17. This agreement supplants and supersedes any and all oral or written arrangements or agreements, and includes the full understanding between the parties, and can be changed only by written agreement signed by a corporate officer, partner or the owner of each of the parties.

18. All notices and other communications pursuant to or relating to any of the subject matter of this agreement shall be in writing and shall be sent by certified or

registered mail to the other party at the following address:

If to COMPANY, at P.O. [REDACTED]

If to DISTRIBUTOR, at [REDACTED]

The effective date of all notices given hereunder shall be measured from the date of mailing such notice.

19. This contract shall be construed according to the laws of [REDACTED] except where the context hereof requires other construction.

20. The parties acknowledge that, at the date hereof, neither has any claims for damages, reimbursement of expenses, contractual breaches, nor any claim of any other kind or nature, except for merchandise purchased by DISTRIBUTOR from COMPANY and not yet paid for, and in consideration of the other entering into this agreement any and all such claims, if the same exist, except for merchandise, are hereby fully and forever discharged and released.

21. All the terms and conditions of this contract are continuing ones, and the failure of either party to insist upon full compliance with any provision shall not be construed as a waiver of the party's rights under that provision, nor shall the same affect any other provision of this agreement.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate the day and date first above written.

[REDACTED]
[REDACTED]
[REDACTED]
By: [REDACTED]

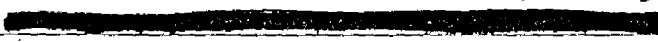
Title: [REDACTED]
1 / 1 / 16

[REDACTED]
By: [REDACTED]

Title: [REDACTED]

EXHIBIT NO. 20DATE 3/8/91BILL NO. 4876

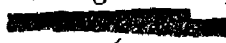
DISTRIBUTOR AGREEMENT

THIS AGREEMENT is entered into effective this first day of , by and between  and , (herein after referred to as "Distributor") having its principal place of business at .

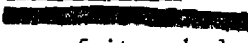
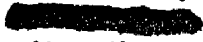
WITNESSETH:

WHEREAS,  is engaged in the importation, distribution and sale of alcoholic beverages and desires to appoint Distributor as one of its wholesale distributors with principal responsibility in the areas set forth in Exhibit A; and certain products enumerated in this Agreement; and

WHEREAS, Distributor warrants it is a licensed wholesaler of wines possessing the necessary local, state and federal licenses or permits authorizing it to sell wines within the areas set forth in Exhibit A; and

NOW THEREFORE, for and in consideration of the agreements and mutual covenants contained in this Agreement, the sufficiency of which is acknowledged by each of the parties,  and Distributor agree as follows:

1. Appointment

 hereby appoints Distributor on a twelve (12) month basis as one of its wholesale distributors of the brands and or products set forth in Exhibit A upon the terms and conditions set forth in this Agreement, Distributor hereby accepts such appointment upon the same terms and conditions. The  may also in its sole discretion add other distributors to distribute these Brands within the area of principal responsibility.

2. Extensions and Reductions

 may, from time to time, within each of its Brands, add items for sale within the area of principal responsibility (defined below). Distributor agrees to accept these items and provide his complete sales effort behind all product line extensions. Additionally, Distributor agrees to accept any reduction in the product line of Brand The Wine Group offers.

3. Allocations of Wines

In the event there is an insufficient quantity of wine to fill distributor orders, [REDACTED] may allocate such portion of its available wines as it shall determine in its sole discretion.

4. Area of Principal Responsibility

Distributor's primary responsibility under this Agreement shall be to devote its best efforts to sell and distribute [REDACTED] Brand to all retail licensees in the Area of Principal Responsibility described in Exhibit A. The parties understand that this Agreement does not place a territorial or customer restriction upon Distributor's sale of [REDACTED] Brand except when state or local law so requires, and that the designation of the Principal Area of Responsibility is solely for the purpose of judging Distributor's performance under this Agreement, which performance is of the essence of this Agreement.

5. Terms of Sales

(a) Distributor shall place all orders for [REDACTED] Brands with [REDACTED] in the manner and by the use of forms and procedures [REDACTED] shall from time to time publish and transmit to Distributor.

(b) Distributor's orders are subject to acceptance by [REDACTED] at its office in [REDACTED], or such other office as [REDACTED] shall designate. [REDACTED] shall use its best efforts to ship all orders within a commercially reasonable time, but shall not be liable to Distributor for any loss or damage arising out of any delay or default in shipment or delivery.

(c) (1) Distributor agrees to pay [REDACTED] for wine shipped at the price stipulated on each invoice, plus any freight, taxes or other charges paid thereon by [REDACTED]; such sums being due and payable thirty (30) days from date of shipment, subject, however, to the provisions of this paragraph 5 (c) (3) below.

(2) [REDACTED] shall have the right, at any time to adjust the price of any of its wines, effective immediately.

(3) [REDACTED] shall, from time to time, and in its sole discretion, set forth credit limits applicable to Distributor's purchases from [REDACTED]. If, in [REDACTED] judgement, Distributor should not be granted credit, due to arrearages in its payments to [REDACTED] or for any other reason, [REDACTED] shall have the right to reduce Distributor's credit limit or to sell to Distributor on a payment before delivery basis only. Distributor agrees to periodically provide [REDACTED] with current Profit and Loss Statements and Balance Sheets.

(d) [REDACTED] will ship all products to Distributor at Distributor's principal executive offices designated on page 1 of this Agreement, or such other location within the Area of Principal Responsibility as Distributor may designate in writing.

6. Performance Standards

(a) Distributor agrees:

(1) Pursuant to the attached Exhibit C, "Objectives and Standards", to sell [REDACTED] Brands only to licensed retail accounts in the distributor's Area of Principal Responsibility in an aggressive, effective and diligent manner, to develop maximum volume of sales of [REDACTED] Brands, to work diligently to establish and maintain maximum distribution of said wines, including all sizes and items, in the maximum number of retail outlets, to have its sales personnel personally contact all retailers in the Area of Principal Responsibility at reasonable intervals to promote and sell [REDACTED] Brands and to secure competitive shelf-facings and displays.

(2) To maintain adequate and trained sales management and an adequate and trained sales force to represent [REDACTED] effectively and to promote the sale of [REDACTED] Brands within Distributor's Area of Principal Responsibility.

(3) To cooperate with [REDACTED] in its sales, promotional, marketing and merchandising programs for [REDACTED] Brands in Distributor's Area of Principal Responsibility.

(4) To maintain adequate inventory levels at least sufficient to cover the ensuing thirty (30) days anticipated sales under proper storage conditions.

(5) To furnish [REDACTED] records and reports of Distributor's activities concerning [REDACTED] Brands, including, but not limited to periodic sales and distribution objectives, sales, marketing and management plans for achieving these objectives, periodic inventories and market evaluations.

(6) To report, at reasonable intervals which [REDACTED] prescribes, market trends and competitive activities in Distributor's Area of Principal Responsibility, and to develop plans to maintain and improve the competitive position of [REDACTED] Brands in such area.

(7) To observe all applicable laws and regulations governing Distributor's activities concerning the sale, distribution or handling of [REDACTED] Brands. Distributor agrees to indemnify [REDACTED] and hold [REDACTED] harmless from and against any loss, damage, liability, claim or expense (including, but not limited to, any and all reasonable legal and other expenses reasonably incurred in connection with any proceeding commenced or threatened or any claim whatsoever, whether or not resulting in any liability) which arises out of, or is based upon, a breach of this Section 6 (a) (6) provided, however, that nothing in this subparagraph 6 (a) (6) shall be construed as requiring Distributor to indemnify [REDACTED] against any claims based on alleged violations by [REDACTED] of any of its legal obligations.

(8) To maintain such warehousing standards as [REDACTED] may from time to time establish, including temperature and stock rotation guidelines relevant to [REDACTED] Brands' shelf-life.

(9) To fulfill Distributor's objectives and standards for achieving maximum distribution of all [REDACTED] Brands and supporting [REDACTED] marketing programs.

(10) To identify itself as a Distributor of [REDACTED] Brands for the duration of this Agreement only, on stationery, advertising and promotional materials, subject to such guidelines as [REDACTED] may provide from time to time. Distributor shall not use any of [REDACTED] names, trade names or trademarks as the name or part of the name of Distributor's business. [REDACTED] authorization under this Section 6 (a) (10) shall cease following the termination of this Agreement.

(b) [REDACTED] and Distributor both agree:

(1) That [REDACTED] selection of Distributor is based upon Distributor's continuing representation that Distributor possesses the necessary assets, personnel and management skills effectively to sell, distribute and handle [REDACTED] Brands in Distributor's Area of Principal Responsibility.

(2) To the minimum purchase requirements set forth in Exhibit B to this Agreement.

(3) To engage jointly in periodic review, evaluation and appraisal of Distributor's performance.

7. Term of Agreement

This Agreement shall automatically expire on [REDACTED]

If as of [REDACTED], Distributor has satisfactorily performed its obligations hereunder and met or exceeded Distributor's objectives and standards, [REDACTED] will offer Distributor a Standard Form Agreement commencing at the expiration of this Agreement.

Absent of a written Agreement, [REDACTED] acceptance of any orders after [REDACTED], shall not be deemed an extension of this Agreement.

8. Termination

Distributor acknowledges that any funds it expends, or expenses it incurs, for advertising, promotion, facilities, vehicles or other items relating to the sale or distribution of [REDACTED] Brands pursuant to this Agreement are expended or incurred with the understanding that this Agreement may at some time be terminated. If this Agreement either expires or is terminated by [REDACTED] as specified in this Agreement, Distributor shall be entitled only to the amount of damages, if any, specified in Section 9 of this Agreement, and Distributor releases [REDACTED] from, and waives any and all claims and liabilities for the payment of, any other amounts of any kind whatsoever, including, but not limited to, any claims for then past performance under this Agreement and any claims relating to, or arising out of, Distributor's expected future performance under this Agreement. Any termination of this Agreement by [REDACTED] under subsection (a) or (b) of this Section 8 shall constitute a termination by [REDACTED] for good cause for purposes of any applicable state law, rule or regulation pertaining to the termination of this commercial relationship.

(a) Either party may terminate this Agreement, by written notice to the other party, effective thirty (30) days after delivery, for any of the following reasons:

(1) Insolvency of the other party; the filing of a voluntary petition in bankruptcy, reorganization or a similar proceeding by the other party; the filing by the other party of an involuntary petition in bankruptcy provided such petition is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for all or a substantial part of the other party's property, provided such appointment is not vacated within thirty (30) days from the date of such appointment; or execution by the other party of an assignment for the benefit of creditors;

(2) The suspension of business, liquidation, dissolution or termination of the existence of the other party; the condemnation, attachment or appropriation of all or a material portion of the property of the other party;

(3) The rendition of a judgement against the other party that remains unsatisfied and subject to execution for thirty (30) days or more provided such judgment is substantial in relation to the other party's assets or may materially affect the other party's performance under this Agreement;

(4) Any attempted sale, transfer or assignment of this Agreement or of any of the rights or obligations assumed hereunder, because the parties recognize said obligations are personal and not assignable without the prior written consent of the party;

(5) A default by the other party in the payment of any monies due to the party seeking to terminate this Agreement which is not cured within ten (10) days of receipt of written notice;

(6) The issuance of a voluntary or involuntary lien or of an attachment against any property of the other party which remains in effect for more than sixty (60) days;

(7) The discovery by the party seeking to terminate this Agreement that the other party to the Agreement made any false material representation;

(8) The failure of the other party to maintain, at all times, all licenses, permits, approvals and consents necessary for the performance of its obligations hereunder, irrespective of the cause or reason for such failure; except that suspensions of licenses or permits for a period of less than fifteen (15) days shall not be construed as a failure for the purpose of this paragraph;

(9) The failure of the other party to perform any of its material obligations under this Agreement (including, but not limited to, Distributor's obligations and undertakings stated in Subsection 6 (a) if such failure is not rectified within sixty (60) days after written notices given by the party seeking to terminate this Agreement;

(b) [REDACTED] may terminate this Agreement upon ten (10) days written notice to Distributor if:

(1) There occurs any change in Distributor's ownership, control or active senior management or a sale, merger, acquisition, spin-off, or otherwise, of Distributor that in [REDACTED] opinion has an adverse effect on Distributor's ability effectively to perform its obligations required under this Agreement.

For purposes of this Section 8 (b) (1), the transfer of more than ten percent (10%) of the voting stock of, or other ownership interest in, Distributor or any corporation, partnership or joint venture which owns fifty-one percent (51%) of the voting stock of, or other ownership interest in, Distributor is a change in ownership or control deemed to have an adverse effect.

(2) [REDACTED] withdraws its wines from sale in Distributor's Area of Principal Responsibility.

(3) Distributor engages in any practice with respect to [REDACTED] Brands which is determined to be an illegal or unfair trade practice in violation of federal or state law, or in the opinion of [REDACTED] legal counsel is an illegal or unfair trade practice in violation of federal or state law.

(c) The Parties agree that Distributor may terminate this Agreement on ninety (90) days notice to [REDACTED] for any reason whatsoever with no further obligations hereunder other than the obligations, if any, specified in Sections 9 and 10 below.

9. Liquidated Damages

It is the express intention of the parties that each party has the right to terminate this Agreement, for the reasons stated herein, without incurring any liability whatsoever to the other party. It is also the express intention of the parties that any termination by [REDACTED] pursuant to Section 8 (a) and 8 (b) shall be deemed termination for good cause, as that term is used in any applicable law governing the termination of wholesale distribution relationships, and that [REDACTED] shall not be liable to Distributor for damages for any such termination.

It is also the intention of the parties to comply with all applicable laws and regulations governing their relationship. In the event any such applicable law or regulation shall be construed to require payment for any damages incurred by Distributor as a result of [REDACTED] breach of this Agreement, or termination of this Agreement in accordance with its terms, or there shall, for any other reason, be a finding that [REDACTED] is liable to Distributor for damages resulting from [REDACTED] breach or termination of this Agreement, the parties agree that the damages outlined below shall be the only damages to which Distributor shall be entitled.

The parties acknowledge that because of the uncertainties inherent in the market for [REDACTED] wines, the tastes of the consuming public, Distributor's profit margins, the valuation of good will, if any, and certain other factors, it would be virtually impossible to fix the actual damages, if any, to Distributor that would result from [REDACTED] breach or termination of this Agreement in whole or in part. The parties further acknowledge that the liquidated damages, calculated as set forth below, constitute reasonable, fair and equitable compensation to Distributor for damages, if any, that Distributor may incur as a result of [REDACTED] breach or termination of this Agreement, particularly because Distributor is free to and does distribute the products of suppliers other than [REDACTED].

The parties further agree that all sums [REDACTED] tenders under this Section shall constitute the payment of valid and complete liquidated damages to Distributor and shall be in satisfaction of any other claimed amounts and in payment and settlement of all claims and liabilities which Distributor may have against [REDACTED] in connection with, or as a result of, any such breach or termination, including any and all claims for incidental or consequential damages. The parties further acknowledge and agree that such liquidated damages do not constitute a penalty. The amount of the liquidated damages to be paid shall be twenty-five cents (\$.25) for each case of [REDACTED] Brands Distributor sold during the twelve (12) month period preceding notice of termination.

10. Events Following Expiration or Termination

(a) Except as provided in Subsection (b) of this Section 10, upon expiration or any termination of this Agreement, all Distributor's outstanding and unshipped orders for [REDACTED] wines shall be deemed cancelled without liability on the part of either party.

(b) Upon expiration or any termination by [REDACTED] pursuant to Section 8 (a), [REDACTED] shall honor those of Distributor's outstanding and unshipped orders required to supply Distributor's historical requirements during the thirty (30) day period between delivery of the notice of termination and its effective date on a case-on-delivery basis, provided Distributor first pays [REDACTED] in full for all outstanding invoices.

(c) Upon expiration of any termination, [REDACTED] shall have the option, within thirty (30) days after the effective date of such expiration or termination, to buy Distributor's inventory of [REDACTED] Brands, provided said wines are in good and saleable condition, at Distributor's laid-in cost, plus reasonable warehousing charges and handling costs incurred by Distributor relating to such repurchase. [REDACTED] may, however, offset all sums Distributor owes to [REDACTED] against the cost of such inventory, warehousing charges and handling costs.

(d) Upon any termination, Distributor shall release and promptly deliver to [REDACTED] all signs, displays, cards and other advertising and promotional material bearing [REDACTED] Brand names then in Distributor's possession which [REDACTED] had supplied to Distributor without charge. Distributor also agrees to remove within thirty (30) days, [REDACTED] Brand Names, trademarks, labels or other [REDACTED] insignia from Distributor's stationery and other property. Distributor shall refrain, and shall cause its employees to refrain from removing, defacing or tampering with any of [REDACTED] advertising or promotional material on any retail premises or elsewhere and from making disparaging remarks about [REDACTED] its employees or [REDACTED] Brands.

(e) Both parties warrant and covenant that after delivery of any notice of termination, as provided in this Agreement, by either party, neither party will take any action to impair or diminish the good will or business of the other party.

11. Claims, Damages and Waiver

Distributor agrees to give written notice to [REDACTED] no later than the anniversary date of this Agreement, of any and all allegations, complaints or claims Distributor may have against [REDACTED], including claims for indemnification for damages, reimbursement of expenses, breach of contract or violations of law. Distributor further agrees that failure to notify [REDACTED] of any such claims in accordance with the terms of this Agreement shall be a full and complete waiver of any such claims and shall forever discharge and release [REDACTED] from liability for such claims.

12. Warranties

[REDACTED] represents and warrants that it shall produce, bottle, package and label all Products it sells to Distributor in conformity with applicable laws and regulations.

During the term of this Agreement, [REDACTED] shall maintain in full force and effect, general liability insurance with product hazard coverage for the sale, distribution and handling of [REDACTED] Brands by Distributor in Distributor's Area of Principal Responsibility.

Unless [REDACTED] specifically directs the recall of a particular [REDACTED] product type, it is the Distributors obligation to insure all [REDACTED] products are saleable and to remove all unmerchandiseable products from Distributors and Retailers inventory, and destroy the unmerchandiseable items. [REDACTED] will have no financial responsibility for those items.

13. Force Majeure

If either party is prevented from performing any of its obligations under this Agreement, except an obligation requiring the payment of wines, because of an event beyond its reasonable control, such as but not limited to, a strike, act of God, fire, flood, war, insurrection, riot, plant breakdown, embargo, explosion, lack of material suppliers, lack of common carrier facilities, shortages of [REDACTED] wines or government order or decree, the affected party shall be excused from performance for the duration of the event.

14. Notices

All notices required under this Agreement shall be in writing, forwarded by certified or registered mail, return receipt request, and shall be effective as of the date on which stamped and deposited in the United States mail addressed to the parties at the addresses set forth in the preamble hereto or to any other address either party may from time to time designate in writing as an address for the purpose of notice.

15. Severability

This Agreement is intended for general use in the United States and in the event any term or provision hereof is in violation of, or prohibited by, any applicable law or regulation, including laws or regulations promulgated by a particular state, such term or provision shall be deemed to be amended or deleted to conform to such law or regulation without invalidating or amending or deleting any other term or provision of this Agreement, although [REDACTED] reserves the right to challenge any such discrepancies in local law.

16. Governing Law

This Agreement is to be governed and construed in accordance with laws of the States [REDACTED] provided, however, that it is subject to the Federal Alcohol Administration Act and all regulations promulgated pursuant to such Act. Any disputes or controversies arising in

connection herewith, other than for non-payment of goods sold and delivered, shall be resolved under [REDACTED] law in a court of competent jurisdiction located in the City and County of [REDACTED] to which jurisdiction the parties hereto submit. [REDACTED] shall have the option of initiating local litigation, if necessary, for non-payment of goods sold and delivered.

17. Waiver

The failure or omission by either party to insist upon or enforce any of the terms of this Agreement shall not be deemed a waiver of such term unless the waiver is in writing and signed by the party against whom such waiver is sought to be enforced. Waiver of any one term shall not be deemed a waiver of any other term. Waiver of any one term on any one occasion shall not be deemed a waiver of the same term on any other occasion.

18. Adherence to Laws

(a) Distributor understands and acknowledges that it is [REDACTED] policy to comply with all federal, state and local laws, rules and regulations governing this Agreement and the performance of the obligations of the parties under this Agreement. Distributor further acknowledges that it is a violation of this policy for a [REDACTED] agent or sales representative to dictate a resale price, or to force adherence to suggested participation in sales promotions or suggested resale prices. Distributor further acknowledges that no [REDACTED] employee or representative has the power or authority to act contrary to this policy on applicable local regulations, that any action contrary to this policy on applicable laws/regulations by any such [REDACTED] employee shall not bind [REDACTED] or Distributor, and that Distributor shall immediately notify [REDACTED] in writing of any [REDACTED] employee's or representative's act or attempted act Distributor suspects, or has reason to believe, is a violation of this policy. [REDACTED] periodically supports the promotion of its brands, where legal, through temporary reductions in the brands selling price to distributors. No employee or representative of [REDACTED] has the power or authority to engage in or commit to any other type of brand promotional activity. It is the responsibility of the Distributor to notify [REDACTED] in writing if a [REDACTED] employee or representative offers or suggests any other type of brand promotional activity.

(b) Nothing herein shall be construed to permit or require either party to do any act or thing in contravention of any law or regulation of the United States or of any agency or instrumentality of the United States or of any state or states in which Distributor distributes [REDACTED] Brands pursuant to this Agreement. [REDACTED] and Distributor mutually agree to do all things reasonably necessary in order to enable both or either of them to comply with all such laws and regulations.

19. Entire Agreement

This Agreement constitutes the entire Agreement between the parties, supersedes all prior oral and written agreements and understandings between the parties, and can be changed or modified only by subsequent written amendment executed by Distributor's and [REDACTED] authorized representatives. The parties hereto agree and acknowledge that they have negotiated each of the provisions contained herein, including termination provisions in good faith and at arms-length and have entered into this Agreement as a free and voluntary act.

20. Nature of Agreement

This Agreement shall not be construed in any way to deem Distributor a [REDACTED] agent or franchisee for any purpose whatsoever. The parties acknowledge that their relationship under this Agreement is a relationship of supplier and wholesaler and not a relationship of principal and agent or of franchisor and franchisee. Neither party is granted any right or authority to act or hold itself out as the legal agent of the other party, or to assume or create any obligations or responsibility, express or implied, on behalf of, or in the name of, the other party or any company affiliated with the other party, or to bind the other party in any manner whatsoever.

21. Binding Agreement

This Agreement shall be binding upon the parties hereto and their successors.

22. Effective Date

This Agreement shall not be effective until it is accepted by [REDACTED], and shall be deemed dated as of the date of such acceptance.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the date and year first above written. BOTH PARTIES AGREE THAT THEY HAVE READ ALL OF THE FOREGOING, UNDERSTAND THIS AGREEMENT AND INTEND TO BE BOUND THEREBY.

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT A

TWG (SELLER) AND FUN BEVERAGE (BUYER)

AREAS OF PRINCIPAL RESPONSIBILITY.

Counties:

[REDACTED]

Brand Wines

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT B

DISTRIBUTORSHIP AGREEMENT

[REDACTED] (SELLER) AND [REDACTED] (BUYER) MINIMUM PURCHASE QUOTA:

[REDACTED] THROUGH [REDACTED]

	<u>First Six Months</u>	<u>Second Six Months</u>	<u>Total</u>
<u>[REDACTED] Wines</u>			
Table Wines Glass	650	650	1,300
Table Winetap	350	300	650
International Style & Sparkling	150	200	350
<u>[REDACTED] Wines</u>	750	1,050	1,800

If purchases for the first six months are 20% behind quota on any brand, an agreed to corrective plan will be implemented by the Distributor for the agreement to remain in effect.

EXHIBIT NO. 20DATE 3/8/91BILL NO. 4876

A fair dealing law is not a set of handcuffs linking the winery to its present wine distributors forever. The New Mexico law requires both good cause and good faith before a distributor can be cancelled by a winery. Here is what a court said about a particular cancellation under that law: [Where the distributor]

consistently failed to meet sales expectations, followed a market philosophy contrary to that of Glenmore, failed to take sufficient steps as promised, to improve its performance, and in Glenmore's business judgment failed to adequately represent its product in New Mexico,

the supplier had more than enough good cause to cancel the distributor under the New Mexico law.

State Distributors, Inc. v. Glenmore Distillers,

738 F.2d 405, 413 (10 Cir. 1984)

Amendments to House Bill No. 76
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 6, 1991

1. Page 2, line 11.
Strike: "essential and"
2. Page 2, lines 13 through 16.
Strike: "if" on line 13 through "supplier" on line 16
3. Page 4, line 19.
Strike: "(1)"
Insert: "(2)"
4. Page 4, lines 22 and 23.
Strike: "measured" on line 22 through "business" on line 23
Following: "as"
Insert: "may be"
5. Page 4, line 23.
Following: "provided"
Strike: "for"
6. Page 6, lines 13 through 17.
Strike: "If" on line 13 through "distributor." on line 17

Representative Johnson closed by saying that Senator Keating has agreed to carry the bill to the senate if it passes.

EXECUTIVE ACTION ON HOUSE BILL 774

Motion:

Senator Noble moved that HB 774 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion that HB 774 be concurred in passed unanimously. Senator Keating will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 76

Motion:

Senator Kennedy moved to amend HB 76.

Senator Hager moved HB 76 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

Senator Lynch went over the amendments that were discussed at an informal meeting to make it fair with members of both sides (See attached copy of amendments).

Senator Lynch asked if Mona Jamieson wished to add anything to the amendments.

Mona Jamieson replied that the amendments are satisfactory.

The amendments proposed by Senator Lynch passed unanimously.

Recommendation and Vote:

The motion that HB 76 be concurred in as amended passed unanimously. Senator Lynch will carry the bill to the floor.

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE

3/13/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	X		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/13/91 Bill No. HB 76 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: BE CONCURRED IN AS AMENDED

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/13/91 Bill No. 11376 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	✓	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

KENNEDY
Motion:
TO AMEND

Amendments to House Bill No. 76
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 13, 1991

1. Page 2, line 11.

Strike: "essential and"

Following: "reasonable"

Insert: "business"

2. Page 4, line 15.

Strike: "written notice"

Insert: "filing a copy of the agreement"

3. Page 4, line 19.

Strike: "(1)(a)"

Insert: "(2)(a)"

4. Page 4, lines 22 and 23.

Strike: "and" on line 22 through "agreement for" on line 23

Insert: ". In the event of"

5. Page 5, line 1.

Following: "j"

Insert: ", the distributor is entitled to compensation for the laid-in cost of his inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section"

6. Page 7, line 1.

Strike: "CONCLUSION"

Insert: "execution"

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 76 (third reading copy -- blue), respectfully report that House Bill No. 76 be amended and as so amended be concurred in:

1. Page 2, line 11.

Strike: "essential and"

Following: "reasonable"

Insert: "business"

2. Page 4, line 15.

Strike: "written notice"

Insert: "filing a copy of the agreement"

3. Page 4, line 19.

Strike: "(1)(a)"

Insert: "(2)(a)"

4. Page 4, lines 22 and 23.

Strike: "and" on line 22 through "agreement for" on line 23

Insert: ". In the event of"

5. Page 5, line 1.

Following: "j"

Insert: ", the distributor is entitled to compensation for the laid-in cost of his inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section"

6. Page 7, line 1.

Strike: "CONCLUSION"

Insert: "execution"

Signed: _____

John "J.D." Lynch, Chairman

MA 3-13-91
And. Coord.

SB 3-13-91
Sec. of Senate